

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARIAM A. PATTERSON and H. J. PATTERSON,

Appellants,

vs.

EDWARD STROECKER, as Trustee of the Estate
of H. J. PATTERSON, a Bankrupt,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska, Fourth Division.

Filed

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F. D. Monkton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

A. R. HEILIG, Attorney for Defendants and Appellants,

Fairbanks, Alaska.

McGOWAN & CLARK and H. E. PRATT, Attorneys for Plaintiff and Appellee.

Fairbanks, Alaska. [1*]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1769.

EDWARD STROECKER, as Trustee of the Estate
of H. J. PATTERSON, a Bankrupt,

Plaintiff and Appellee.

vs.

MARIAM A. PATTERSON and H. J. PATTERSON,

Defendants and Appellants.

Stipulation Relative to Printing Record.

It is hereby stipulated that in printing the papers and records to be used on the hearing of the appeal taken in the above-entitled cause for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, that the title of the court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted in the place of said title in all papers used as a part of said record, the words "Title of court

*Page-number appearing at foot of page of original certified Transcript of Record.

and cause," and that all endorsements on all papers except the clerk's filing-marks and admission of service need not be printed.

Dated at Fairbanks this 7 day of December, 1916.

McGOWAN & CLARK,
H. E. PRATT,

Attorneys for Plaintiff and Appellee.

A. R. HEILIG,

Attorney for Defendants and Appellants.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 7, 1916. J. E. Clark, Clerk. [2]

[Title of Court and Cause.]

Praecept for Transcript on Appeal.

To J. E. Clark, Clerk of Above-entitled Court:

In above-entitled cause you will please prepare a transcript on appeal to the U. S. Circuit Court of Appeals, sitting at San Francisco, California, and incorporate in such transcript the following portions of the record, to wit:

Complaint.

Answer of H. J. Patterson.

Answer of Mariam A. Patterson.

Reply to answer of H. J. Patterson.

Reply to answer of Mariam A. Patterson.

Consent order for deposit of royalties in court, May 18, 1912.

Order for depositing royalties in court, Oct. 9, 1913. Findings of fact and conclusions of law signed by the Court.

Judgment.

Bill of exceptions and statement of evidence and order of Court allowing, settling and approving same.

Order enlarging time for filing bill of exceptions, Oct. 4, 1916.

Order enlarging time for filing bill of exceptions, Oct. 21, 1916.

Assignment of errors.

Petition for appeal.

Order allowing appeal and fixing bond.

Supersedeas and cost bond on appeal.

Citation on appeal.

Order enlarging time for filing record on appeal.

Praecipe for transcript.

Stipulation relative to printing transcript.

A. R. HEILIG,

Attorney for Defendants and Appellants.

Received copy December 7, 1916.

McGOWAN & CLARK,

H. E. PRATT,

Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 7, 1916. J. E. Clark, Clerk. [3]

[Title of Court and Cause.]

Complaint.

Comes now the above-named plaintiff and for cause of action against defendants alleges:

I.

That on the 16th day of April, 1912, H. J. Patter-

son, of Fairbanks Recording Precinct, Territory of Alaska, filed his voluntary petition in this court, the same being No. 35-B, on the records of said Court, praying that he be declared a bankrupt and be given the benefit of the National Bankruptcy Act, and on the 16th day of April, 1912, this Honorable Court duly declared said Patterson a bankrupt.

II.

That, at an adjourned session of the first meeting of the creditors of said bankrupt, on the 4th day of May, 1912, duly and regularly called and convened by the Referee in Bankruptcy of this Court for this precinct, for the purpose of electing a trustee of the estate of said H. J. Patterson, all the creditors present whose claims had been filed and allowed, appointed this plaintiff unanimously to said office of trustee, which was accepted by plaintiff, and plaintiff thereafter duly and regularly qualified as such trustee, in the manner prescribed by law, and ever since said time has been, and now is, the duly appointed, qualified and acting trustee of the estate of [4] H. J. Patterson, a bankrupt.

III.

That, in the petition of said bankrupt, he sets up that he has creditors whose claims amount to something over thirty-five thousand dollars and that his assets are worth only about five thousand dollars. Claims of said creditors, some of them judgment creditors, have been filed and allowed by said Referee in Bankruptcy, amounting to about \$25,000, and bankrupt's assets do not exceed the amount set forth in his petition.

IV.

That, on the 27th day of November, 1911, said defendant H. J. Patterson was insolvent and unable to pay his debts due and owing to various persons in an amount in excess of thirty thousand dollars, while said Patterson's assets did not exceed in value the amount of ten thousand dollars, and, on said 27th day of November, 1911, said H. J. Patterson was the legal and equitable owner and entitled to the immediate and exclusive possession of an undivided one-quarter interest in that certain placer mining claim known as the Daly Bench placer mining claim, situate, lying, and being in the second tier of benches on the left limit of Esther Creek, opposite creek placer mining claim No. Three Below Discovery on said Esther Creek, all in the Fairbanks Recording Precinct, Territory of Alaska.

V.

That, on said 27th day of November, 1911, said H. J. Patterson, for the purpose of defrauding, hindering and delaying his creditors, and especially the creditors whose claims are on file and allowed as above set forth, they being his creditors on said 27th day of November, 1911, in the same amounts and then due, without any consideration of any kind conveyed and [5] transferred, by an instrument in writing duly executed and recorded, all of his title to said one-quarter interest in said Daly Bench, to his wife, Mariam A. Patterson, and said Mariam A. Patterson received the title to said claim at said time, and is still holding it in trust for said H. J. Patterson, to aid him in defrauding and cheating his cred-

itors, and said H. J. Patterson still is the real owner thereof, although the legal title is in his wife's name, and said mining claim is not listed by said bankrupt in his said petition as belonging to him in any manner either legally or equitably.

VI.

That, prior to said fraudulent transfer as above set forth, said H. J. Patterson was the owner of a lay or lease agreement, covering the whole of said Daly Bench hereinbefore particularly described, and thereafter and prior to the commencement of this action and prior to his adjudication in bankruptcy, for a valuable consideration, assigned and transferred said lay to H. C. Hamilton, who is now the owner and holder thereof, and is mining said ground under the terms and conditions of said original lay and said sublease made by said H. J. Patterson to said H. C. Hamilton.

VII.

That under and by virtue of the terms and conditions of said sublease and arrangements made subsequent thereto, said H. J. Patterson was entitled to receive from said mining operations so conducted by said Hamilton five per cent of the gross output of said ground.

VIII.

That said interest of said Patterson in said lease has never been assigned or transferred to any person or persons whomsoever, and said Patterson is now entitled to receive five [6] per cent of the gross output of said ground during the life of said lease.

IX.

That said Mariam A. Patterson claimed, by virtue of her alleged ownership of said property, to be entitled to receive said five per cent of the gross mineral output of said claim and to be the assignee of all benefits under said lease, by virtue of said transfer of said undivided one-quarter interest in and to said property, made by said H. J. Patterson to her on the 23d day of November, 1911, as aforesaid.

X.

That plaintiff herein has no objections to said layman continuing operations on said ground, and is willing to have said layman continue mining operations on payment of the royalties prescribed in said lease and sublease hereinbefore set forth.

XI.

That, on or about the 8th day of May, 1912, said H. C. Hamilton held his first cleanup on said ground from the dump extracted by him from said ground during the spring of the year 1912, and, at the time of said cleanup, the defendants above-named demanded the payment to them of five per cent of the gross output thereof.

XII.

That said Hamilton now has in his possession said five per cent of said cleanup, which he then and there refused to pay to said defendants, and will, from time to time as said winter dump is cleaned up, have other sums of money claimed by said Mariam A. Patterson under and by virtue of said fraudulent conveyance from H. J. Patterson to said Mariam A.

Patterson, hereinbefore particularly described, and said defendants Mariam [7] A. Patterson and H. J. Patterson will demand and receive from said H. C. Hamilton said five per cent of said gross output, unless restrained by this Court.

XIII.

That plaintiff is informed and believes and so alleges that said Mariam A. Patterson is insolvent, and that, if said Mariam A. Patterson secures possession of said five per cent of the gross output of said ground, it will be forever lost to the creditors of said H. J. Patterson and to plaintiff herein as trustee thereof.

XIV.

That plaintiff is informed and believes and so alleges that said Mariam A. Patterson has no right, title, or interest in or to said gold and gold-dust or any part thereof, and that plaintiff herein is entitled to receive said five per cent of said gross output, by virtue of being trustee for the creditors of said H. J. Patterson, and said sum should be applied toward the payment of said creditors' claims.

XV.

That a receiver should be appointed to receive said gold and gold-dust and to hold the same until the title thereto can be ascertained, or to pay the same into the registry of this Court, there to be held until the title to the same can be determined.

XVI.

That plaintiff has no plain, speedy, or adequate remedy at law, and no means of enforcing his right to collect said five per cent of the gross output of said

ground, without the intervention of a Court of Equity. [8]

WHEREFORE: Plaintiff prays as follows, to wit:

1.

For a temporary restraining order, restraining the said defendants, and each of them, their agents, representatives, servants, employees and attorneys, from demanding or attempting to collect or receive said five per cent of the gross mineral output of said Daly Bench placer mining claim or any part thereof, until the further orders of this Court.

2.

That a receiver be appointed, with authority to demand and receive from said H. C. Hamilton, or his representatives or assigns, five per cent of the gross mineral output of said Daly Bench, and to hold the same until the ownership thereof can be determined by this Court; or, for an order directing the said H. C. Hamilton, his agents or assigns, to pay said five per cent of the gross mineral output of said claim into the registry of this Court, there to await the further disposition thereof by order of this Court.

3.

For a decree of this Court, decreeing that the transfer from said H. J. Patterson to said Mariam A. Patterson was fraudulent and is void, and was made by said H. J. Patterson with the purpose, intention, and design of cheating, defrauding, hindering, and delaying his said creditors and that said Mariam A. Patterson holds the title to an undivided one-quarter interest in said Daly Bench in trust for H. J. Patter-

son and, by virtue of the appointment of the plaintiff herein as trustee for the creditors of said H. J. Patterson, in trust for said plaintiff herein as successor in interest of said H. J. Patterson. [9]

4.

For a decree of this Court, decreeing that said Mariam A. Patterson has no right, title or interest in or to said property or any part thereof, or in or to any gold or gold-dust extracted therefrom.

5.

For a decree of this Court, decreeing that plaintiff herein is entitled to receive five per cent of the gross mineral output of said ground, as trustee for the creditors of said H. J. Patterson.

6.

For an order of this Court, directing said Mariam A. Patterson to reconvey said property, to wit, an undivided one-quarter interest in and to the Daly Bench placer mining claim, hereinbefore particularly described, to the plaintiff herein as trustee for the creditors of H. J. Patterson, a bankrupt.

7.

For an order fixing the time and place when said defendants shall appear and show cause, if any they have, why said restraining order should not be continued during the pendency of this action.

8.

For costs of suit and for such other and further relief as is just, meet, and equitable in the premises.

LOUIS K. PRATT & SON,

McGOWAN & CLARK,

Attorneys for Plaintiff. [10]

Territory of Alaska,
Fairbanks Precinct.

Edward Stroecker, being first duly sworn according to law, on his oath deposes and says:

I am the plaintiff in the above-entitled action; I have read the within and foregoing complaint, know the contents thereof, and the same is true as I verily believe.

EDWARD STROECKER.

Subscribed and sworn to before me this eleventh day of May, A. D. one thousand nine hundred twelve.

[Seal] JOHN A. CLARK,
Notary Public in and for the Territory of Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 11, 1912. C. C. Page, Clerk.
By H. C. Green, Deputy. [11]

[Title of Court and Cause.]

Separate Answer of Mariam A. Patterson.

Comes now the defendant Mariam A. Patterson and for her separate answer to the complaint herein,—

Denies each and every allegation contained in paragraph IV thereof, excepting that she admits that on the morning of November 27, 1911, the bare legal title to an undivided one-quarter interest in the mining claim described in said paragraph stood in the name of H. J. Patterson, and alleges that at that time the said H. J. Patterson was not the actual, real or equitable owner of said interest, but that she, this de-

fendant, was at that time, and had been for a long time prior thereto, the actual, real and equitable owner thereof.

2. Denies each and every allegation contained in paragraph V thereof, excepting that she admits that in the evening of November 27, 1911, the said H. J. Patterson did, by instrument in writing duly executed and delivered, convey to this defendant the bare legal title to said quarter interest theretofore standing in his name, and that this defendant then and there received the bare legal title to said interest, and that the legal title to said interest has since said time been, and now is, in this defendant, and admits that said interest is not listed by the said H. J. Patterson in his schedule of assets in said bankruptcy proceedings.

3. Denies the allegation contained in paragraph VI that said H. J. Patterson was the owner of a lease covering the whole of said Daly Bench, but admits that prior to the transfer by him to her of the bare legal title to said quarter interest he had a lay or lease upon the undivided three-fourths interest in said Bench belonging [12] to James Wickersham, and admits that he assigned said lease to H. C. Hamilton and that he executed a lease of the other quarter interest belonging to this defendant to the said Hamilton shortly before he transferred to her the bare legal title thereto theretofore held by him.

4. Denies the allegation contained in paragraph VII that said H. J. Patterson was at any time entitled to receive from the mining operations conducted by said Hamilton five per cent or any part of

the gross output of said ground by virtue of his alleged ownership of a quarter interest therein, but alleges that this defendant was then and is now entitled to receive said five per cent of the gross output of the actual, legal and equitable owner of said quarter interest.

5. Denies each and every allegation contained in paragraphs VIII, XIII, XIV, XV and XVI thereof.

6. She admits that she claims to be entitled to receive the five per cent of the gross output of said mining claim, referred to in paragraph IX, but denies that her claim is based solely upon the transfer to her of the bare legal title to said quarter interest made by said H. J. Patterson to her on November 27, 1911, and alleges that long prior to said date she was the actual, real and equitable owner of said quarter interest, and now is the actual, legal and equitable owner thereof.

7. She denies the allegation contained in paragraph XI that the said H. J. Patterson demanded the payment to himself of five per cent of the gross output of said mining claim at the first cleanup, but admits that she demanded payment to her at the first cleanup of five per cent of the gross output, upon the ground that she was the owner of a quarter interest in said mining claim. [13]

And for a further defense and as an affirmative answer this defendant Mariam A. Patterson alleges:

1. That on the 19th day of September, 1910, James Wickersham was the sole owner of placer mining claim known as the Daly Bench, situate on the left limit of Esther creek, in the Fairbanks Re-

cording District, Alaska; that on said date said Wickersham entered into an agreement with H. J. Patterson, whereby said Wickersham agreed to convey to said H. J. Patterson an undivided one-quarter interest in said mining claim if said H. J. Patterson would sink a hole to bedrock upon said claim and do the assessment work thereon for the year 1910.

2. That said H. J. Patterson agreed to said conditions, but desired to use what money he had for other purposes, and therefore, with the knowledge and consent of the said Wickersham, agreed with this defendant that if she would pay with her own funds the expense of sinking such hole to bedrock and of doing said assessment work, that she should be entitled to receive, and would receive, a conveyance of said quarter interest instead of said H. J. Patterson.

3. That in pursuance of the agreement thus made between this defendant and H. J. Patterson, and with H. J. Patterson and the said Wickersham, this defendant did, at her own expense, on the 20th and 21st day of September, 1910, cause to be sunk a hole to bedrock and did cause to be done the assessment work for the year 1910, upon said claim, and with funds belonging to her and which were her separate property and estate, and in which the said H. J. Patterson had no interest whatever she did on the 21st day of September, 1910, pay to the persons who performed said work at her instance and request the sum of \$225.00 for sinking such hole to bedrock and doing said assessment work. [14]

4. That before said Wickersham had time to execute a deed conveying said quarter interest as he

had agreed, he left the District of Alaska and remained without said District until late in the fall of 1911; that after said Wickersham returned to Fairbanks, said H. J. Patterson requested him to make a deed conveying said quarter interest to this defendant upon the ground that she had performed the conditions of said contract, but the said Wickersham preferred to, and did, make such deed to the said H. J. Patterson, without the knowledge or consent of this defendant, and delivered the same to said H. J. Patterson on or about the 10th day of November, 1911, but with the express understanding had between the said Wickersham and the said H. J. Patterson that the latter would convey the bare legal title to said quarter interest so received by him to this defendant.

5. That thereafter, when this defendant learned that said deed had been made and delivered to H. J. Patterson, she demanded from him a conveyance of the legal title to her in pursuance of his said agreement with her, whereupon said H. J. Patterson did, on the evening of November 27, 1911, by deed convey to this defendant the legal title to said quarter interest then held by him.

6. That since the 21st day of September, 1910, this defendant has been at all times and now is the equitable owner of said quarter interest, and since the 27th day of November she has been at all times and now is the owner and holder of the legal and equitable title to said quarter interest, and is now and for a long time past has been in the actual possession thereof, and is entitled to and has the present right of possession thereof.

7. That since the 21st day of September, 1910, said H. J. Patterson has had no right, title nor interest, legal or equitable, in said quarter interest, and received the bare legal title thereto on or about the 10th day of November, 1911, for the sole purpose of transferring the same to this defendant, and executed said deed of conveyance [15] to her on the 27th day of November, 1911, for the sole purpose of transferring to her the bare legal title then standing in his name and in performance of his agreement made with her on September 19, 1910, and without any intent to hinder, delay or defraud any of his creditors.

8. That during the time said H. J. Patterson held the bare legal title to said quarter interest he made a lease thereof to H. C. Hamilton, reserving for said quarter interest as rent or royalty five per cent of the gross output of gold mined by said Hamilton from said mining claim during the term of such lease; that this defendant has assented to such lease and the rents and royalties therein reserved, and by virtue of her ownership of said quarter interest she is entitled to receive five per cent of the gross output of gold mined by said Hamilton, as rent or royalty, at each and every cleanup.

Wherefore this defendant prays judgment that plaintiff is not entitled to the relief claimed by him nor any part thereof, and that she is the legal and equitable owner of the quarter interest in said mining claim described in the complaint, and is entitled to the rents and royalties accruing therefrom; and

that she recover her costs and disbursements herein.

A. R. HEILIG,
Atty. for Mariam A. Patterson.

District of Alaska,
Fourth Division,—ss.

Mariam A. Patterson, being duly sworn, deposes and says that she is one of the above-named defendants; that the allegations contained in foregoing answer are true as she verily believes.

MARIAM A. PATTERSON.

Subscribed and sworn to before me this 20 day of May, 1912.

[Seal] ALBERT R. HEILIG,
Notary Public, District of Alaska. [16]

Received copy, May 22, 1912.

McGOWAN & CLARK,
LOUIS K. PRATT & SON,
Atty. for Pltff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 22, 1912. C. C. Page, Clerk.
[17]

[Title of Court and Cause.]

Separate Answer of H. J. Patterson.

Comes now H. J. Patterson, one of the above-named defendants, and for his separate answer to the complaint herein,—

1. Denies each and every allegation contained in paragraph IV thereof, excepting that he admits that on the morning of November 27, 1911, the bare legal title to an undivided one-quarter interest in the min-

ing claim described in said paragraph stood in the name of H. J. Patterson, and alleges that at that time the said H. J. Patterson was not the actual, real nor equitable owner of said interest, but that the defendant Mariam A. Patterson was at that time, and had been for a long time prior thereto, the actual, real and equitable owner thereof.

2. Denies each and every allegation contained in paragraph V thereof, excepting that he admits that in the evening of November 27, 1911, he did, by instrument in writing duly executed and delivered, convey to the defendant Mariam A. Patterson the bare legal title to said quarter interest theretofore standing in his name, and that said defendant Mariam A. Patterson then and there received the bare, legal title to said interest, and that the legal title to said interest has since said time been, and now is, in the defendant Mariam A. Patterson, and that said interest is not listed by him in his schedule of assets filed with his petition in bankruptcy.

3. Denies the allegation contained in paragraph VI that he was the owner of a lease covering the whole of said Daly Bench, but admits that prior to the transfer by him to Mariam A. Patterson of the bare legal title to a quarter interest in said bench he had a [18] lay or lease upon the undivided three-fourths interest in said bench belonging to James Wickersham, and admits that he assigned said lease to H. C. Hamilton, and that he executed a lease of the other quarter interest belonging to the defendant Mariam A. Patterson to the said H. C. Hamilton, shortly before he transferred to the said Mariam A.

Patterson the bare legal title thereto theretofore held by him.

4. Denies the allegation contained in paragraph VII that he was at any time entitled to receive from the mining operations conducted by said Hamilton five per cent or any part of the gross output of said ground by virtue of his alleged ownership of a quarter interest therein, but alleges that the defendant Mariam A. Patterson was then and is now entitled to receive said five per cent of the gross output as the actual, legal and equitable owner of said quarter interest.

5. Denies each and every allegation contained in paragraphs VIII, XIII, XIV, XV and XVI thereof.

6. He admits that defendant Mariam A. Patterson claims to be entitled to receive the five per cent of the gross output of said mining claim, referred to in paragraph IX, but denies that her claim is based solely upon the transfer to her of the bare legal title to said quarter interest made by him on November 27, 1911, and alleges that long prior to said date she was the actual, real and equitable owner of said quarter interest, and now is the actual, legal and equitable owner thereof.

7. Denies the allegation contained in paragraph XI that he demanded the payment to himself of five per cent of the gross output of said mining claim at the first cleanup, but admits that the defendant Mariam A. Patterson demanded payment to her at the first cleanup of five per cent of the gross output.

As a further and affirmative answer to said complaint he alleges:

1. That on the 19th day of September, 1910, James Wickersham was the sole owner of the placer mining claim known as the Pat Daly Bench, situate on the left limit of Esther creek, in the Fairbanks Recording District, Alaska; that on said date said Wickersham entered into an agreement with this defendant, whereby said Wickersham agreed to convey to this defendant an undivided one-quarter interest in said mining claim if this defendant would sink a hole to bedrock upon said claim and do the assessment work thereon for the year 1910.

2. That this defendant agreed to said conditions, but desired to use what money he had for other purposes, and therefore with the knowledge and consent of the said Wickersham agreed with the defendant Mariam A. Patterson that if she would pay with her own funds the expense of sinking such hole to bedrock and of doing said assessment work, that she should be entitled to receive and would receive a conveyance of said quarter interest instead of this defendant.

3. That in pursuance of the agreement thus made between this defendant and Mariam A. Patterson and with this defendant and the said Wickersham, the defendant Mariam A. Patterson did, at her own expense, on the 20th and 21st days of September, 1910, cause to be sunk a hole to bedrock, and did cause to be done the assessment work for the year 1910 upon said claim; and with funds belonging to her and which were her separate estate and property,

and in which this defendant had no interest whatever, she did on the 21st day of September, 1910, pay the sum of \$225 for sinking such hole to bedrock and doing said assessment work.

4. That before said Wickersham had time to execute a deed conveying said quarter interest as he had agreed, he left the district of Alaska and remained without said district until late [20] in the fall of 1911; that after said Wickersham returned to Fairbanks this defendant requested said Wickersham to make a deed conveying said quarter interest to the defendant Mariam A. Patterson, upon the ground that she had performed the conditions of said contract, but the said Wickersham preferred to, and did, make such deed to this defendant, and delivered the same to him on or about the 10th day of November, 1910, with the express understanding had with him at the time of such delivery that this defendant would convey the bare legal title to said quarter interest so received by him to the said Mariam A. Patterson.

5. That thereafter, when the said Mariam A. Patterson learned that said deed had been made and delivered to this defendant, she demanded from him a conveyance of the legal title to her in pursuance of their said agreement, whereupon this defendant did on the evening of the 27th day of November, 1911, by deed convey to the said Mariam A. Patterson the legal title to said quarter interest.

6. That since the 21st day of September, 1910, said Mariam A. Patterson has been at all times and now is the equitable owner of said quarter interest,

and since the 27th day of November, 1911, she has been at all times and now is the owner and holder of the legal and equitable title to said quarter interest, and is now and for a long time past has been in the actual possession thereof, and is entitled to and has the present right of possession thereof.

7. That since the 21st day of September, 1910, this defendant has had no right, title nor interest, legal or equitable, in said quarter interest, and received the bare legal title thereto on or about the 10th day of November, 1911, for the sole purpose of transferring the same to said Mariam A. Patterson, and executed said deed of conveyance to her on the 27th day of November, 1911, for the sole purpose of transferring to her the bare legal title [21] then standing in his name and in performance of his agreement made with her on September 19, 1910, and without any intent to hinder, delay or defraud any of his creditors.

8. That during the time that this defendant held the bare legal title to said quarter interest he made a lease thereof to H. C. Hamilton, reserving for said quarter interest as rent or royalty five per cent of the gross output of gold mined by said Hamilton from said mining claim during the term of such lease; that the defendant Mariam A. Patterson has assented to such lease and the rents and royalties therein reserved, and by virtue of her ownership of said quarter interest she is entitled to receive five per cent of the gross output of gold mined by said Hamilton, at each and every cleanup as such rent or royalty.

WHEREFORE this defendant prays judgment that plaintiff is not entitled to the relief claimed by him nor any part thereof, and that she, the Mariam A. Patterson, is the legal and equitable owner of the quarter interest in said mining claim and entitled to the rents and royalties accruing therefrom; and that he recover his costs and disbursements herein.

A. R. HEILIG,
Atty. for H. J. Patterson.

District of Alaska,
Fourth Division,—ss.

H. J. Patterson, being duly sworn, deposes and says that his is one of the above-named defendants; that the allegations contained in foregoing answer are true as he verily believes.

H. J. PATTERSON.

Subscribed and sworn to before me this 17 day of May, 1912.

[Seal] ALBERT R. HEILIG,
Notary Public, District of Alaska.

Received copy May 22, 1912.

McGOWAN & CLARK,
LOUIS K. PRATT,
Atty. for Plaintiff. [22]

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Division. May 22, 1912. C. C. Page, Clerk. [23]

[Title of Court and Cause.]

Reply to Answer of Mariam A. Patterson.

Comes now the above-named plaintiff and in reply to the separate answer of defendant Mariam A. Patterson states:

Denies each and every allegation of new matter in said answer contained.

In reply to defendant Mariam A. Patterson's "Further Defense and Affirmative Answer," plaintiff states:

1. Denies the allegations contained in paragraphs 2 and 3 thereof.

2. Denies the allegations contained in paragraph 4 thereof.

3. Denies the allegations contained in paragraph 5 thereof except that he admits H. J. Patterson executed a deed, bearing the date November 27th, 1911, conveying the legal title to said quarter interest.

4. Denies each and every allegation in paragraph 6 thereof except that he admits that said defendant has been the holder of the legal title to said interest since November 27th, 1911.

5. Denies each and every allegation in paragraph 7.

6. Plaintiff has not sufficient information upon which to base a belief as to the truth or falsity of the allegations contained in paragraph 8 thereof, and therefore denies the same. [24]

WHEREFORE plaintiff prays judgment as in his complaint set forth.

McGOWAN & CLARK.

LOUIS K. PRATT & SON.

Territory of Alaska,

Fourth Division,—ss.

Edward Stroecker, being first duly sworn, on oath says: I am the plaintiff in the above-entitled suit; I have read the foregoing reply and the allegations therein contained are true as I verily believe.

EDWARD STROECKER.

Subscribed and sworn to before me this 25th day of Sept. 1913.

[Seal]

HARRY E. PRATT,

Notary Public in and for Alaska.

My commission expires June 24, 1916.

Service of the above reply, by receipt of copy thereof, is hereby admitted this 25th day of September, 1913.

A. R. HEILIG,

Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 25, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy. [25]

[Title of Court and Cause.]

Reply to Answer of Defendant H. J. Patterson.

Comes now the above-named plaintiff and in reply to the separate answer of defendant H. J. Patterson states:

Denies each and every allegation of new matter in said answer contained.

In reply to defendant H. J. Patterson's "Further and affirmative answer," plaintiff states:

1. Denies the allegations contained in paragraphs 2, 3 and 4 thereof.
2. Denies each and every allegation of paragraph 5, except that he admits H. J. Patterson executed a deed, bearing the date November 27th, 1911, conveying the legal title to said quarter interest, to said Mariam A. Patterson.
3. Denies each and every allegation in paragraph 6 thereof, except that he admits said defendant Mariam A. Patterson has been the legal owner to said interest since Nov. 27th, 1911.
4. Denies the allegation of paragraph 7.

5. Plaintiff has not sufficient information upon which to base a belief as to the truth or falsity of the allegations contained in paragraph 8 thereof, and therefore denies the same.

WHEREFORE, plaintiff asks for the relief prayed for in his complaint.

McGOWAN & CLARK,
LOUIS K. PRATT & SON,
Attorneys for Plaintiff. [26]

United States of America,
Territory of Alaska,—ss.

Edward Stroecker, being first duly sworn, on oath says: I am the plaintiff in the above-entitled suit; I have read the foregoing reply and the allegations therein contained are true as I verily believe.

EDWARD STROECKER.

Subscribed and sworn to before me this 25th day of Sept., 1913.

[Seal]

HARRY E. PRATT,

Notary Public in and for Alaska.

My commission expires June 24th, 1916.

Service of the foregoing reply, by copy thereof, is hereby admitted this 25th day of September, 1913.

A. R. HEILIG,

Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 25, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy. [27]

[Title of Court and Cause.]

Consent Order for Deposit of Royalties.

The above matter coming on regularly for hearing on the seventeenth day of May, A. D. one thousand nine hundred twelve, on the application of the plaintiff above named for a continuance of the temporary restraining order hereinbefore granted, *pendente lite*, at said time appearing Messrs. John A. Clark and Harry E. Pratt, attorneys for plaintiff, and Mr. A. R. Heilig, attorney for defendant, said attorneys, for their respective clients, consenting in open court that five per cent of the gross output of gold and gold-dust and other precious metals and minerals extracted from the Daly Bench on the left limit of Esther Creek, particularly described in the complaint on file herein, shall be deposited by H. C. Hamilton, the layman operating said ground, with

the Clerk of this Court during the pendency of this action, and that said Clerk be authorized to convert said gold-dust into cash, and the Court being fully advised in the premises,—

IT IS THEREFORE ORDERED that H. C. Hamilton, layman or lessee of the Daly Bench, situate in the second tier of benches on the left limit of Esther Creek, opposite first tier bench claims Nos. Three and Four Below Discovery on said Esther Creek, after each cleanup hereafter held on said ground, during the pendency of this action, deposit five per cent of the gross amount of each and every cleanup, said sum being the amount in dispute between plaintiff and defendant, with the Clerk of this Court, to await the outcome of the above-entitled action, or [28] until further orders of this Court.

Be it further ordered that the Clerk of this Court be, and he is, hereby authorized to convert all gold and gold-dust so deposited with him by said H. C. Hamilton in the above-entitled cause, into cash, and for that purpose he may sell the same to any bank or banker or private individual in the town of Fairbanks, Alaska, at the current market price thereof, and shall hold the proceeds of such sale in lieu of the gold-dust itself.

Be it further ordered that the restraining order heretofore by this Court issued in the above-entitled cause, wherein defendants are restrained from demanding, receiving, or attempting to collect said five per cent of the gross output of said Daly Bench, be and remain in full force and effect until further order of this Court.

Done at Fairbanks, Alaska, on this eighteenth day of May, A. D. one thousand nine hundred twelve.

PETER D. OVERFIELD,
District Judge.

Entered in Court Journal, No. 12, page 9.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 18, 1912. C. C. Page, Clerk. By H. C. Green, Deputy. [29]

[Title of Court and Cause.]

Order to Deposit Money in Registry of Court.

This matter coming on for hearing, on the application of attorney for defendant for an order requiring the American Bank of Alaska to deposit in the registry of this Court certain moneys deposited with said bank by Henry C. Hamilton, during the season of 1912, as royalties derived from the Daly Bench on Esther Creek, payable to the owner of the interest in said Daly Bench which is in litigation in the above-entitled action, and it appearing to the satisfaction of this Court that, shortly after the institution of said action, by stipulation of the attorneys for the respective parties, this Court made an order, directing said Henry C. Hamilton to pay into the registry of this Court all royalties derived from the one-quarter interest claimed by the defendant Mariam A. Patterson, to await the outcome of this action, and it further appearing to the satisfaction of this Court that said royalties were, by said Henry C. Hamilton, paid and delivered to the American Bank of Alaska, and inadvertently were not paid in to the registry

of this Court, but were merely deposited by said Henry C. Hamilton with said American Bank of Alaska for safekeeping, and that, since said time, said gold-dust has been converted into money and is now held by said American Bank of Alaska subject to the order of this Court, and it further appearing that said Henry C. Hamilton is, at the present time, absent from the town of Fairbanks and cannot personally give directions concerning said gold-dust.

[30]

Now, therefore, it is ordered that said American Bank of Alaska pay and deliver to the Clerk of this Court money equivalent in value to the amount of the gold-dust so deposited with said bank by said Henry C. Hamilton for safekeeping as aforesaid, and that, on the return of said Henry C. Hamilton to Fairbanks, if it is ascertained that any portion of said gold-dust so deposited by him was not properly deposited as royalties from said Daly Bench, said Henry C. Hamilton may apply to this Court for such order concerning the disposition of said money as may be proper in the premises, and that all said money so deposited by said American Bank of Alaska in the registry of this Court be held by the Clerk of this Court subject to the order of this Court.

Done in open court at Fairbanks, Alaska, on this ninth day of October, A. D. one thousand nine hundred thirteen.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 12, page 719.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 9, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy. [31]

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

The above-entitled cause coming on regularly for trial on the 18th day of April, 1916, the plaintiff appearing in person and by and through his attorneys, Messrs. McGowan & Clark and Mr. Harry E. Pratt, and the defendants appearing in person and by and through their attorney, Mr. A. R. Heilig, and both sides having announced themselves ready for trial, and the trial having thereupon proceeded, and oral and documentary evidence having been introduced for and on behalf of both plaintiff and defendants, and the matter having been fully argued by counsel for the respective parties and having been submitted to the Court for decision, and the Court having thereafter and on the 15th day of May, 1916, announced its decision in said matter;

Now, therefore, in pursuance thereof, the Court does now find and establish the following as its findings of fact and conclusions of law in said cause, to wit:

FINDINGS OF FACT.

(1) That on and prior to the 19th day of September, 1910, James Wickersham was the owner in fee, subject only to the paramount title of the United States, in possession of, and entitled to the possession of that certain placer mining claim, known as

the Daly Bench, situate on the left limit of Esther Creek, in the Fairbanks Mining and Recording Precinct, Fourth Judicial Division, Territory of Alaska, and that on or about said date said James Wickersham entered into a written agreement with H. J. Patterson, whereby said Wickersham agreed to convey to said H. J. Patterson an undivided one-quarter interest in and to said mining [32] claim if said H. J. Patterson would, at his own expense sink one hole to bedrock on said claim and do the assessment work thereon for the year 1910, which said agreement was coupled with a lease of the whole of said premises.

(2) That thereafter said H. J. Patterson entered into an oral agreement with his wife Mariam A. Patterson, one of the defendants herein, whereby said Mariam A. Patterson, in consideration of pay the money necessary to fulfill the terms of said agreement with said Wickersham relative to acquiring a one-quarter interest in said ground, should be the owner of a one-quarter interest when title was acquired thereto, and said Mariam A. Patterson, on 21 September, 1910, paid to Fred Craig the sum of \$225, which sum was the sum necessary to be paid for causing two drill-holes to be sunk to bedrock on said ground, said work being performed in the month of September, 1910, and the money so paid by her was part of her own funds which she had at the time mentioned and prior thereto on deposit in bank in her own name, and which money was her sole and separate property, in and to which her husband H. J. Patterson had no interest or right whatsoever.

(3) That thereafter the defendant H. J. Patterson abandoned said lease and did no work thereunder, and subsequent to said abandonment of said lease by said H. J. Patterson a controversy arose between the stakers of the Happy Home Association claim, adjoining said Daly Bench, and the owners of said Daly Bench, relative to the ownership of the greater portion of said Daly Bench, and said matters so in controversy were settled and adjusted between said parties on the 8th day of November, 1911, and said James Wickersham and H. J. Patterson, for the purpose of compromising said dispute, assigned and transferred to the owners of said Happy Home Association claim and their lessees a strip of ground 75 feet in width, off of the upper end of the Daly Bench, running up and down the general course of Esther Creek and parallel to the northerly line of said claim.

(4) That prior to the settlement of said controversy last referred to and on or about the 14th day of October, 1911, James Wickersham made and executed a [33] deed to H. J. Patterson for an undivided one-quarter interest in and to said Daly Bench hereinbefore referred to, for the recited consideration of one dollar, and in consideration of the doing of the assessment work thereon by the vendee for the year 1910, in compliance with the United States statutes, which said deed was delivered to said H. J. Patterson subsequent to the 8th day of November, 1911, and was by him duly filed for record on the 10th day of November, 1911, in the office of the Recorder of the Fairbanks Mining and Record-

ing Precinct, Territory of Alaska, which said deed was executed by said James Wickersham to said H. J. Patterson as grantee therein without the knowledge or consent of Mariam A. Patterson, and said Wickersham delivered said deed to said H. J. Patterson on the 10th day of November, 1911, and at the same time consented that H. J. Patterson convey said one-quarter interest to anyone he chose.

(5) That prior to the execution of said deed by said James Wickersham to H. J. Patterson, as set forth in finding No. 4 hereof, and on the 12th day of October, 1911, said James Wickersham made, executed, and delivered to said H. J. Patterson a lease covering all the Daly Bench placer mining claim, together with all appurtenances, and the right and privilege to prospect and mine the same and extract therefrom all the gold-bearing placers therein contained, subject to the following condition, to wit:

“As part consideration of this lease the party of the second part agreed that his undivided one-fourth interest in said premises shall be covered and included in the terms of this lease and shall also at all times be subject to any debts, defaults or damages resulting from the working under this lease, or for violation thereof, and the said Daly claim shall at all times be worked and considered as a whole between the parties hereto, and all subject to the terms of this lease and it is especially agreed that the party of the first part shall have a first lien upon the whole of the output of the whole of the Daly claim, including the undivided one-

fourth interest of the party of the second part for the payment of the royalty reserved to the party of the first part and the performance of the terms of this lease."

That the term of said lease, as therein provided, was from the date thereof until the 12th day of October, 1915, unless sooner determined or forfeited through failure on the part of the lessee to pay and deliver the rents and [34] royalties agreed upon, or for other violations of the conditions thereof; said lease also provided, among other things, that the lessee, as royalties and rentals, should pay and deliver to the lessor therein 25 per cent or one-quarter of the gross amount of each and every cleanup at the time the same was finished; and also contained the following provision, to wit:

"And it is of the essence of this contract, and the party of the second part hereby specially agrees to pay and to deliver to the party of the first part, or to his duly authorized agent, in consideration of this lease, as the share, royalty and rental of the party of the first part twenty-five (25 per cent) per cent or a full one-fourth of the gross amount of all gold-dust and other mineral extracted, mined, taken or produced from the whole of the said premises during the whole of the term of this lease or lay, and agrees to pay and deliver said one-fourth part of the said gross output of the whole of said mining claim to the said party of the first part or his duly authorized agent immediately

upon and after each clean-up is so made, without delay or default for any reason whatever."

Said lease also recited that James Wickersham, the lessor therein named, was the owner of an undivided three-quarters interest in and to the property covered by said lease, and H. J. Patterson, the lessee, the owner of an undivided one-quarter thereof, and said lease was on the 10th day of November, 1911, filed for record in the office of the Recorder of the Fairbanks Mining and Recording Precinct, Fourth Judicial Division, Territory of Alaska, and recorded in volume 5 of Leases, at page 216 thereof.

(6) That thereafter and on the 29th day of January, 1912, the lessor therein named consented that the share or royalty to be paid to said lessor should be reduced from 25 per cent to 20 per cent of the gross output of the ground described in said lease, and that in all other respects the lease should remain in its original form.

(7) That subsequent to the execution of said lease from said James Wickersham to said H. J. Patterson, dated 12 October, 1911, to wit, on 27 November, 1911, said H. J. Patterson executed and delivered to H. C. Hamilton an instrument, of which the following is a copy:

"This indenture of lease made and entered into this 27th day of November, 1911, by and between H. J. Patterson of Fairbanks, Alaska, as party of the first part, and H. C. Hamilton of the same place as party of the second part, witnesseth:

“Whereas, by indenture of lease dated October 12, 1911, James Wickersham did lease, let and demise unto the said H. J. Patterson that certain [35] placer mining claim known as the ‘Daly Bench,’ situate on the left limit of Esther Creek, second tier, about opposite creek claim number three below discovery on said creek, in the Fairbanks Recording District, Alaska, for the term commencing October 12, 1911, and ending October 12, 1915;

And whereas said James Wickersham has consented to the subletting of said demised premises by the said H. J. Patterson to the said H. C. Hamilton upon the terms and conditions in said lease set forth;

Now, therefore, this indenture witnesseth that the said H. J. Patterson does hereby lease, demise and sublet unto the said H. C. Hamilton all of the placer mining claim above described, including all his right, title and interest therein held by the said H. J. Patterson as lessee of the said Wickersham and in his own right as owner of an undivided one-fourth part of the title to said mining claim, to have and to hold unto the said H. C. Hamilton for and during the term commencing this day and ending October 12, 1915, upon the same terms, conditions and covenants and subject to the same terms and conditions as in said lease from James Wickersham to said H. J. Patterson set forth, excepting, however, that the said H. C. Hamilton shall pay as royalty and rental as such les-

see twenty-five per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said demised premises to the said James Wickersham, and shall pay in addition thereto five per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said premises to the said H. J. Patterson, but in all other respects the terms, covenants and conditions of said lease from Wickersham to Patterson shall be binding upon the said H. C. Hamilton with the same force and effect and to all intents and purposes as if he were a party named as lessee in said lease.

And the said H. C. Hamilton hereby agrees to comply with and perform all the covenants and conditions in this lease contained and as well those contained in said lease from Wickersham to Patterson to the same extent and effect as if they were fully set out and repeated in this indenture, and to that end said lease and the terms, covenants and conditions therein referred to and hereby referred to and made a part of this lease.

In witness whereof the parties of the first and second part have hereunto set their hands and seals this 27th day of November, 1911.

H. J. PATTERSON. (Seal)

H. C. HAMILTON. (Seal)"

Which said instrument was duly executed in the manner described by law and said Hamilton there-

upon entered upon said ground and commenced the prosecution of mining operations thereon.

(8) That the defendant Mariam A. Patterson was informed of and had knowledge of the terms and conditions of the lease from said Wickersham to H. J. Patterson, dated 12 October, 1911, and knew the terms and conditions thereof, and had knowledge of and was fully informed of the terms and conditions of the assignment of said lease from said H. J. *Hamilton* to said H. C. Hamilton, dated 27 November, 1911, and assented thereto.

(9) That subsequent to the execution of said assignment to said H. C. Hamilton, but on the same day that said assignment was made, H. J. Patterson [36] caused to be prepared and executed a deed in proper form, to the defendant Mariam A. Patterson, his wife, wherein it is recited:

“That the party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, and sold, conveyed, remised, released, and quitclaimed, and by these presents doth grant, bargain, sell, convey, remise, release, and forever quitclaim, unto the said party of the second part, her heirs and assigns, all of his right, title, and interest, being an undivided one-fourth interest of, in, and to that certain bench placer mining claim, situate in the Fairbanks Precinct, Alaska, on the left limit of Ester Creek, and known as the Pat Daly

Bench placer mining claim, being the second bench claim on the left limit and about opposite No. Three (3) creek claim below Discovery on said Ester Creek, and located by Pat Daly on December 1st, 1905, to have and to hold the same, together with the appurtenances and improvements thereon, to and unto the said party of the second part, her heirs and assigns forever."

That the real consideration of the deed from H. J. Patterson to Mariam A. Patterson was the payment by the latter of the expenses of sinking the said holes to bedrock and doing the assessment work for the year 1910 with her own money and the performance of his said promise made on 19 September, 1910.

(10) That the said H. J. Patterson did not at any time assign, transfer, or set over to the defendant Mariam A. Patterson any of his rights in and to the contract with H. C. Hamilton, wherein said H. J. Patterson reserved to himself five per cent of the gross output of said claim, and no transfer of said five per cent of the gross output of said claim was ever made by said H. J. Patterson to said Mariam A. Patterson.

(11) That said H. C. Hamilton, and other parties working under him, extracted large quantities of gold-bearing gravel and earth from the said Daly Bench, and in the spring of the year 1912 cleaned up the dumps of gold-bearing gravel and earth so extracted from said ground, and said defendant Mariam A. Patterson demanded five per cent

thereof as owner of the property, claiming the same as royalties due to her by virtue of being the owner of an undivided one-quarter interest in said Daly Bench, and plaintiff in this action as trustee for the creditors of said H. J. Patterson, a bankrupt, instituted this action in this court, wherein certain orders were made, and said five per cent of the gross output of said claim, extracted during the year 1912, amounting to the sum of \$5,174.66, was thereafter deposited in the registry of this court and was there [37] held to await the outcome of this action.

(12) That subsequent to the transfer by said H. J. Patterson to Mariam A. Patterson of an undivided one-quarter interest in said Daly Bench, as hereinabove set forth, and on the 16th day of April, 1912, defendant H. J. Patterson filed a voluntary petition in this court to be adjudged a bankrupt, and was on said date adjudged a bankrupt, and plaintiff in this action was thereafter duly appointed Trustee for the creditors of said bankrupt, and thereafter qualified as such, and ever since said time has been, and now is, the duly appointed, qualified, and acting trustee for the creditors of H. J. Patterson, a bankrupt.

(13) That the deed from H. J. Patterson to Mariam A. Patterson of said undivided one-quarter interest in and to said Daly Bench was made by him and received by her in good faith, for a valuable and sufficient consideration, and without any design on the part of either of them to hinder, delay, or defraud any creditor of the said H. J. Patterson, but for the purpose of vesting in said Mariam A. Patterson the legal title to said undivided one-quarter in-

terest in and to said Daly Bench, said Mariam A. Patterson having theretofore and since the 19th day of September, 1910, been the equitable owner thereof.

(14) That said H. J. Patterson was insolvent on the 27th day of November, 1911, and at all times subsequent thereto up until the time of his adjudication as a bankrupt.

(15) That all the moneys now in the registry of this court in this cause, to wit, the sum of \$5,174.66, are the proceeds of five per cent of the gold and gold-dust washed from the gravels extracted from the Daly Bench during the year 1912, and the said five per cent of said gold-dust is the same five per cent that was reserved to said H. J. Patterson under his agreement with said H. C. Hamilton, as hereinabove set forth.

Having found and established the foregoing as its findings of fact, this Court does now make and establish the following as its conclusions of law based thereon, to wit: [38]

CONCLUSIONS OF LAW.

(1) That the deed from H. J. Patterson to Mariam A. Patterson of an undivided one-quarter interest in and to said Daly Bench vested in said Mariam A. Patterson the legal title to said property, subject to the terms and conditions of that certain lease from James Wickersham to H. J. Patterson dated 12 October, 1911, and no royalties were reserved to the owner of said undivided one-quarter interest in said Daly Bench under the terms and conditions of said lease.

(2) That five per cent of the gross output of the gold and gold-dust extracted from said Daly Bench, reserved by said H. J. Patterson, in his contract with H. C. Hamilton, dated 27 November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench and not as the owner of an interest therein.

(3) That the deed from H. J. Patterson to Mariam A. Patterson, dated 27 November, 1911, did not transfer to said Mariam A. Patterson any part of the five per cent of the gross output of the Daly Bench, reserved by said H. J. Patterson under his contract with H. C. Hamilton, of even date therewith, and said Mariam A. Patterson acquired no right, title, or interest in or to said five per cent of the gross output of said claim under and by virtue of the terms of said deed from said H. J. Patterson.

(4) That said Mariam A. Patterson has no right, title, or interest in or to any part of the gold or gold-dust, or the proceeds thereof, now in the registry of this court in this cause, the same being the proceeds of five per cent of the gold and gold-dust extracted from said claim and washed from the pay-gravels therein contained, in the year 1912.

(5) That all the moneys and gold-dust now in the registry of this court in this cause are the property of the plaintiff in this action as trustee for the creditors of H. J. Patterson, a bankrupt, and should be paid and delivered to plaintiff herein, to be disposed of by him in the manner directed by law, in his representative capacity as trustee for said creditors.

(6) That Mariam A. Patterson was at all times subsequent to about the 21st [39] day of Septem-

ber, 1910, the equitable owner of an undivided one-quarter interest in and to the Daly Bench placer mining claim, hereinabove described, and the defendant H. J. Patterson was her agent, and said Mariam A. Patterson is bound by all the acts and things done by said H. J. Patterson in connection with said interest.

(7) That said Mariam A. Patterson, under the deed from H. J. Patterson to herself, dated 27 November, 1911, received the legal title to said undivided one-quarter interest in and to said Daly Bench claim, subject to all the burdens theretofore placed upon the same by her said agent H. J. Patterson, and said Mariam A. Patterson under and by virtue of said deed did not acquire any right, title, or interest in or to any of the royalties, moneys, or gold-dust reserved to said H. J. Patterson under and by virtue of the lease to said H. J. Patterson from James Wickersham, or the transfer thereof to said H. C. Hamilton and the agreement with H. C. Hamilton, which said last-mentioned agreement was dated 27 November, 1911.

(8) That Mariam A. Patterson was a *bona fide* holder of said one-quarter interest for value prior to the date of the adjudication of H. J. Patterson as a bankrupt, and that she is entitled to a judgment of this Court, adjudging her to be the legal owner of a one-quarter interest in the Daly Bench placer mining claim hereinabove described.

(9) That plaintiff herein is entitled to a judgment of this Court, decreeing him to be the owner as trustee for the creditors of said H. J. Patterson,

a bankrupt, and entitled to the possession of, all the gold and gold-dust and proceeds of gold-dust now in the registry of this court in this cause, amounting to the sum of \$5,174.66, and for an order directing the clerk of this court to pay and deliver to said plaintiff all the moneys and gold-dust now held by said clerk in said cause as aforesaid.

(10) That plaintiff is entitled to entry of a judgment against defendants, and each of them, for all his costs incurred in this action.

Let judgment be entered accordingly.

Dated at Fairbanks, Alaska, on this 20th day of May, A. D. one thousand nine hundred sixteen.

CHARLES E. BUNNELL,
District Judge. [40]

Ent. in Court Jr. No. 13, page 574.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 20, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [41]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 1769.

EDWARD STROECKER, Trustee, etc.,

Plaintiff,

vs.

MARIAM A. PATTERSON et al.,

Defendants.

Judgment.

This cause having come on regularly for trial on the 26th day of April, 1916, the plaintiff appearing

in person and by and through his attorneys, Messrs McGowan & Clark and Mr. Harry E. Pratt, and the defendants appearing in person and by and through their attorney, Mr. Albert R. Heilig, and both parties announcing themselves ready for trial, and the trial having thereupon proceeded, and oral and documentary evidence having been introduced for and on behalf of plaintiff and defendants, the matter having been fully argued by counsel for the respective parties, and submitted to the Court for consideration, and this Court having thereafter rendered its decision and having thereupon found, established, signed, and filed its findings of fact and conclusions of law;

Now, therefore, in pursuance thereof, on motion of the attorneys for the plaintiff, it is ordered, adjudged, and decreed as follows, to wit:

(1) That the defendant Mariam A. Patterson, at all times between the 21st day of September, 1910, and the 27th day of November, 1911, was the equitable owner of an undivided one-fourth interest in and to the Daly Bench, situate on the left limit of Esther Creek, in the Fairbanks Mining and Recording Precinct, Territory of Alaska, and the said Mariam A. Patterson was, at the [42] time of the institution of this action, and ever since the 27th day of November, 1911, was the owner of the legal and equitable title to said property as against all persons, save and except the Government of the United States.

(2) That the deed to the said property, from H. J. Patterson to Mariam A. Patterson, of date the

27th day of November, 1911, was subject to the terms and conditions of a certain lease, from James Wickersham to H. J. Patterson, dated the 12th day of October, 1911, and no royalties were reserved by the owner of said interest so conveyed to Mariam A. Patterson under the terms and conditions of said lease, and the five per cent of the gross output of all the gold and gold-dust extracted from said Daly Bench, reserved by H. J. Patterson in his contract with H. C. Hamilton, dated the 27th day of November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench, and not as the owner of an interest therein.

(3) That Mariam A. Patterson has no right, title, or interest, either legal or equitable, in or to the gold and gold-dust or the proceeds thereof, impounded with the clerk of this court in this action, amounting to the sum of \$5,174.66, and that the creditors of H. J. Patterson, a bankrupt, are the owners thereof, and that plaintiff in this action, as trustee for the creditors of H. J. Patterson, a bankrupt, is entitled to the possession thereof, for the purpose of distributing the same in the manner prescribed by the bankruptey laws, and that the clerk of this court be, and he is, hereby ordered and directed to pay to the plaintiff herein, as trustee for the creditors of H. J. Patterson, a bankrupt, on the first day of November, 1916, all moneys now in the hands of the clerk of this court impounded in this cause, less such percentage thereof as said clerk is by law entitled to receive for impounding the [43] same, unless said defendant Mariam A. Patterson has, on

or before the said date, filed with the said clerk of said court a supersedeas bond on appeal in this cause, duly approved by this Court, being for such sum as may hereafter be fixed by order of the Court.

(4) That the plaintiff in this action, as trustee for the creditors of H. J. Patterson, a bankrupt, is the owner of five per cent of all the gold and gold-dust extracted from said Daly Bench subsequent to the adjudication of said H. J. Patterson, a bankrupt, reserved to said H. J. Patterson under said contract of said H. J. Patterson with H. C. Hamilton, of date of the 27th day of November, 1911, from all persons working said ground under said contract.

(5) That the plaintiff herein be, and he is, hereby given and granted judgment against the defendants, and each of them, for all his costs incurred in this action, to be taxed by the clerk of the court.

Done at Fairbanks, Alaska, this 4th day of October, A. D. one thousand nine hundred sixteen.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 612.

[Endorsed]: Filed in the District Court, Territory of Alaska. 4th Div. Oct. 4, 1916. J. E. Clark. Clerk. [44]

[Title of Court and Cause.]

Defendants' Bill of Exceptions and Statement of Evidence.

Be it remembered that this action came on regularly for trial in above-entitled court on April 18,

1916; then appeared Messrs. McGowan & Clark and Harry E. Pratt as attorneys for plaintiff, and A. R. Heilig as attorney for defendants, and the following proceedings were had and evidence submitted.

It was then stipulated by counsel for both parties that \$5,174.66 now in the registry of this court is five per cent of the gross output of the Daly Bench placer mining claim, which fund is claimed by plaintiff as trustee of the estate of H. J. Patterson, a bankrupt, and is also claimed by Mariam A. Patterson, defendant, as her property, and is one of the subjects of controversy in this action.

It was also admitted by defendants that H. J. Patterson, on November 27, 1911, was indebted to various of his creditors in the sum of \$30,000. [45]

Upon plaintiff's offer the following agreement between James Wickersham and H. J. Patterson, dated September 19, 1910, was admitted in evidence and marked Plaintiff's Exhibit "A."

Plaintiff's Exhibit "A"—Agreement, September 19, 1910, Between James Wickersham and H. J. Patterson.

AGREEMENT.

This indenture made and entered into this 19th day of September, 1910, by and between James Wickersham, of Fairbanks, Alaska, the party of the first part, and H. J. Patterson, of Ester Creek, Fairbanks Precinct, Alaska, the party of the second part,

Witnesseth: That the party of the first part is the owner and in possession of that certain placer mining claim known as the "Daly Bench," situate on the left limit of Ester Creek in the second tier of

benches and about opposite Nos. 2 and 3 below Discovery on the said left limit of said Ester Creek, Fairbanks Precinct, Territory of Alaska, and the party of the second part desires to prospect thereof and to take a lease for the future working thereof; in consideration of the sinking of a hole from the surface to bedrock thereon for the purpose of prospecting the said ground and determining its value by the party of the second part at his own expense, the party of the first part does hereby agree to make, sign and deliver to the party of the second part a quitclaim deed to an undivided one-fourth interest in the said premises; the party of the second part undertakes hereby, in consideration of said agreement and transfer to sink said hole upon the said premises and to do the assessment work for the year 1910 without any expense whatever to the party of the first part; in further consideration of the rents, royalties, covenants and agreements hereinafter reserved and by the said party of the second part to be kept, paid and performed, the party of the *first* does hereby grant, demise, let and lease unto the said party of the second part the whole of the said premises together with all the appurtenances and the right and privilege to further prospect and mine the same and to extract therefrom all of the gold and gold-bearing rock, earth and gravel therein contained.

To have and to hold the same unto the said party of the second part from the date of this agreement until the 19th day of September, 1912, unless sooner determined or forfeited through the failure of the

party of the second part to pay and deliver the rent agreed upon or from some other violation of the terms, covenants and conditions hereinafter contained or any of them against the said party of the second part reserved.

And in consideration of the said demise the said party of the second part does covenant and agree to and with the said party of the first part as follows, to wit:

To enter upon said demised premises within a reasonable time after the signing and sealing of these presents and to dig, excavate, bore or otherwise sink one hole from the surface to bedrock upon said claim for the purpose of prospecting the said ground and doing the assessment work for the year 1910.

And the party of the second part further agrees that he make, sign [46] and cause to be recorded in the office of the Recorder in and for the Fairbanks Precinct, Territory of Alaska, an affidavit proving the doing of the assessment work thereon for the year 1910.

And the party of the second part further agrees to enter upon said premises within a reasonable time after the signing of these presents and proceed to work the same in a miner-like manner with due regard to the development, preservation and value of the said demised premises; to leave all unworked ground intact and adjacent; to operate no rocker, long tom or other kindred machine; to do no panning thereon save and except to keep account of and test the value of the ground worked, and of such pannings to keep an accurate account and include

the gross amount thereof in the gross output of gold produced from said premises; to work and mine said demised premises steadily and continuously from the date hereof until the termination of this lease; to well and sufficiently timber all shafts, drifts, tunnels and passageways where proper in accordance with good mining and not to drift or excavate outside the boundaries of said demised premises, and should said party of the second part so do then any damage or damages resulting therefrom to any person or persons owning or operating adjacent mines or mining ground shall be paid by the said party of the second part and save the party of the first part harmless because thereof.

And the said party of the second part hereby expressly covenants and agrees that he will not allow or permit any lien or liens to be filed or any claim of any kind to be made by, through or under him upon any part or portion of the premises or title therein claimed or owned by the party of the first part, nor shall any part or portion of the dump or dumps or the proceeds thereof or the buildings or other improvements thereon to be subjected to any lien or liens for any labor or material and as against the same the said party of the second part will hold and keep the party of the first part and the said demised premises safe and harmless, and the said party of the second part will post a notice in writing upon said premises in the name of the party of the first part giving notice that no claim or lien shall be made thereon by any laborer or materialman or other person and said notice shall be filed in accord-

ance with the statute in such case now made and provided.

And the said party of the second part further agrees to permit the party of the first part or his agent at any time to enter into and upon the said demised premises for the purpose of inspecting, testing, panning and determining the condition and value thereof and of the gold-bearing gravels therein and will permit him or his agent to inspect the books and records of the said party of the second part relating thereto and will permit him to acquire therefrom any and all information regarding the prosecution of said work by the said party of the second part.

And the said party of the second part does hereby specially agree not to assign this lease or lay or any interest therein or thereunder and not to sublet or sublease the said demised premises or any part thereof not to permit the same nor any part, interest or title therein to pass to any other person whatever without the written consent of the party of the first part first had and obtained. [47]

And the party of the second part agrees to deliver up to the party of the first part upon the expiration of this lease the whole of the premises so owned by the party of the first part and all and every the appurtenances and improvements thereunto belonging.

And the party of the second part further specially agrees to make each and every cleanup in the presence of the party of the first part or his agent and to give due notice thereof.

And the said party of the second part further agrees to pay to the party of the first part as his share or royalty, in consideration of this demise twenty-five per cent of all the gold, gold dust and other mineral extracted, mined, taken and produced from the said ground during the term of this lease or lay and will pay the same to the party of the first part immediately after each cleanup, provided, that if the party of the second part shall comply with his part of the agreement herein and sink the said hole to bedrock as provided herein the party of the first part will convey the said one-fourth interest to him and then the said party of the second part shall only pay to the party of the first part twenty-five per cent of three-fourths of said output.

It is further agreed that the party of the second part shall and will furnish all the necessary tools, provisions, labor and outfit for the proper working of the said demised premises, during the whole of the term without any expense whatever to the party of the first part.

And it is further agreed by the party of the second part that he will immediately upon locating pay thereon put such a force of men and machinery at work thereon as is necessary to work the same in a good and workmanlike manner and will continue to work the same from that time until the end of the term of this lease.

And it is further agreed by the party of the second part that if he shall fail, refuse, or neglect to continue his work on the said ground for as much as sixty days at any time then this lease may be de-

clared to be at an end by the party of the first part who may thereupon enter upon the said premises and remove all persons therefrom and take exclusive possession thereof.

And finally upon the violation or failure by the said party of the second part or any person or persons under him, of any of the terms, covenants and conditions herein prescribed, the term of this lease or lay shall, at the option of the party of the first part expire and the said premises and every part thereof, with the appurtenances and improvements, save the personal property belonging to the party of the second part shall become forfeited to the party of the first part and he may with or without demand enter upon said premises and dispossess any and all persons occupying the same with or without force and with or without process of law. Each and every clause, covenant, term and condition of this agreement shall extend to the heirs, executors and administrators of the parties hereto and to the assigns of either. [48]

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES WICKERSHAM. (Seal)

H. J. PATTERSON. (Seal)

In the presence of

HENRY RODEN.

Territory of Alaska,
Fairbanks Precinct,—ss.

This is to certify that on this 19 day of September, 1910, before me, a notary public in and for the Ter-

ritory of Alaska, residing therein, duly commissioned and sworn, personally appeared James Wickesham and H. J. Patterson, to me known to be the individuals described in and who executed the within lease or lay agreement, and they and each of them, each for himself and not one for the other acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year in this instrument first above written.

[Notarial Seal] HENRY RODEN,
Notary Public in and for Alaska.

(Indorsed: 34,520. Entered. Compared. Agreement Between James Wickesham and H. J. Patterson, Dated September 19, 1910, Territory of Alaska, Fourth Judicial Division, ss. Filed for Record at request of H. J. Patterson on the 14 day of Aug., 1911, at 15 min. past 3 P. M., and Recorded in Vol. 5 of Miscel., page 255, Fairbanks Recording District. John F. Dillon, Recorder.) [49]

Upon plaintiff's offer the following agreement between James Wickesham and H. J. Patterson, dated October 12, 1911, was admitted in evidence and marked Plaintiff's Exhibit "B."

**Plaintiff's Exhibit "B"—Lease, October 12, 1911,
Between James Wickesham and H. J. Patterson.**

LEASE OF MINING GROUND.

This indenture of lease made and entered into this 12th day of October, 1911, by and between James

Wickersham, of Fairbanks, Alaska, the party of the first part, and H. J. Patterson, of the same place, the party of the second part,

Witnesseth: That the party of the first part is the owner of an undivided three-fourths interest in and the party of the second part is the owner of an undivided one-fourth interest in that certain placer mining claim known as the "Daly Bench," situate on the left limit of Ester Creek in the second tier of benches and about opposite three below discovery on the left limit of said Ester Creek, Fairbanks Precinct, Alaska, and adjoining the Norton bench, which said Daly Bench was located by Pat Daly on December 1, 1905, the location notice of which is recorded at page 137, Vol. 7 of Locations, in the office of the recorder in said Fairbanks Precinct, Alaska; that the party of the second part has applied for and the party of the first part hereby gives to the party of the second part a lease upon the said claim in consideration of the terms and covenants of this lease and also in consideration of the terms and agreements contained in that certain other contract signed between these parties at the same time as this lease, which said other agreement is as much a part of this agreement of lease as if written in its body in consideration of the rents, royalties, covenants and agreements hereinafter reserved and by the said party of the second part to be kept, paid and performed, and in consideration of the performance of the other mentioned agreement, of even date herewith, the party of the first part does hereby grant, demise, let and lease unto the said party of the sec-

ond part, the party of the second part does hereby accept the lease of the whole of the said premises together with all appurtenances and the right and privilege to prospect and mine the same and to extract therefrom all the gold and gold-bearing placers therein contained subject to the terms of this agreement:

To have and to hold the same unto the said party of the second part from the date of this agreement until the 12th day of October, 1915, unless sooner determined or forfeited through the failure of the party of the second part to pay and deliver the rents and royalties agreed upon, or for other violation of the terms, covenants and conditions in this lease, or the agreement of even date herewith, against the said party of the second part reserved.

As part consideration of this lease the party of the second part agrees that his undivided one-fourth interest in said premises shall be covered and included in the terms of this lease and shall also at all times be subject to any debts, defaults or damages resulting from the working under this lease, or for violation thereof, and the said Daly claim shall [50] at all times be worked and considered as a whole between the parties hereto, and all subject to the terms of this lease and it is especially agreed that the party of the first part shall have a first lien upon the whole of the output of the whole of the Daly claim, including the undivided one-fourth interest of the party of the second part for the payment of the royalty reserved to the party of the first part and the performance of the terms of this lease.

In consideration of the said demise and the lease the said party of the second part does hereby covenant and agree to and with the said party of the first part as follows, to wit: To enter upon the said demised premises within thirty days after the signing of these presents and begin and thereafter continuously maintain possession and mine the said mining claim in a good and miner-like manner with due regard to the development, preservation and value of the same as a mining claim, to leave all unworked ground intact and adjacent; to operate no rocker, long tom or other kindred machine except for prospecting; to do no panning thereon except to keep account of and test the value of the ground, and of such mineral obtained by rocker, longtom, panning or otherwise to keep accurate account and include the gross amount thereof in the gross output of gold produced from said premises; to work and mine said premises steadily and continuously from the date hereof until the termination of this lease; to well and sufficiently timber all shafts, drifts, tunnels and passageways where proper in accordance with good mining and not to mine, drift or excavate outside the boundaries of said demised premises, and should the party of the second part or anyone for or under him do so or otherwise interfere with other property then any damage resulting therefrom to any person shall be paid by the said party of the second part who shall save the party of the first part harmless; to excavate, mine and remove all pay dirt from the tunnels, drifts or other openings in said mine which

shall contain at least one dollar and a half to the square foot of bedrock.

And the party of the second part further agrees that immediately upon locating pay on said demised premises he will put such a sufficient force of men and machinery at work thereon as is necessary to work the same in a good and workmanlike manner and will continue to work the same from that time until the same is worked out; he agrees to furnish all the necessary tools, provisions, labor and outfit for the purpose of properly working the said premises during the whole of the term without any expense whatever to the party of the first part; and the party of the second part hereby expressly covenants and agrees that he will not allow or permit any lien or liens to be adjudged against the premises or upon the dump or gold or gold dust coming from the said premises, and the party of the second part will hold and keep the party of the first part and all his interest in the claim or output safe and harmless from any such liens for labor or otherwise, and the party of the second part agrees to post and maintain a notice in writing upon said premises in the name of the party of the first part giving notice to all persons, laborers, materialmen and others that no claim of lien shall be made thereon by any laborer, materialman or other person, in accordance with the statutes, and the party of the second part further agrees that his undivided one-fourth interest shall be held liable to the party of the first part for all liens or other [51] claims made or adjudged against said

property which shall in any way become a charge upon the interest of the party of the first part.

The party of the second part further agrees to permit the party of the first part or his agent at any time to enter into and upon all parts of the demised premises for the purpose of inspecting, testing, panning and determining the condition and value of the dirt in said ground, or to ascertain any other fact which in the discretion of the party of the first part or his agent is necessary and proper to his security, and will at all times permit the party of the first part or his agent to inspect the books, records and accounts, either in his books or in the bank, assay office or other place where the evidence and record can be found, and will permit the party of the first part or his agent to acquire in all proper ways and means any and all information regarding the business thereof or connected therewith.

The party of the second part agrees specially to make each and every cleanup in the presence of the party of the first part, or his duly authorized agent, and to give him or his agent reasonable advance notice so that he can be present and specially agrees to deliver to the party of the first part or to his duly authorized agent, the full twenty-five per cent or one-quarter of the gross amount of each and every cleanup at the time the same is finished, and it is agreed by the party of the first part that he or his duly authorized agent will at that time and place give to the party of the second part a receipt in writing for all such gold or gold dust so then received.

And it is of the essence of this contract, and the

party of the second part hereby specially agrees to pay and to deliver to the party of the first part, or to his duly authorized agent, in consideration of this lease, as the share, royalty and rental of the party of the first part twenty-five (25 per cent) per cent or a full one-fourth of the gross amount of all gold, gold dust and other mineral extracted, mined, taken or produced from the whole of the said premises during the whole of the term of this lease or lay, and agrees to pay and deliver said one-fourth part of the said gross output of the whole of the said mining claim to the said party of the first part or his duly authorized agent immediately upon and after each cleanup is so made, without delay or default for any reason whatever.

And the party of the second part does hereby specially agree not to assign this lease or lay or any interest therein or thereunder and not to sublet or sublease the said demised premises or any part thereof nor to permit the same nor any part thereof nor any interest therein to pass to any other person whatever without the written consent of the party of the first part had and obtained, and this prohibition shall extend to the undivided one-fourth interest belonging to the party of the second part as fully as to the interest belonging to the party of the first part.

The party of the second part further agrees that he will do the annual assessment work on said claim for the years 1911, 1912, 1913, 1914 and 1915, and that he will also make and file for record in the office of [52] the recorder in the precinct where said claim is located the proof thereof within the time limited

by law to secure the greatest legal advantage thereof to the owners of said claim.

The party of the second part agrees to deliver up to the party of the first part the whole of the premises belonging to the first *part*, or to his vendee, upon the expiration of this lease, and all the appurtenances and improvements thereunto belonging, free and clear of all incumbrances, liens, or taxes.

And it is further agreed by the party of the second part that if he or any person in possession through or under him, shall fail, neglect or refuse to work said ground continuously and in good faith for a period of more than sixty days, without the written consent of the party of the first part or his duly authorized agent, then and in that event the party of the first part, or his duly authorized agent may at his option declare the lease to be forfeited and at an end, and the party of the first part or his duly authorized agent, or his vendee may enter into possession thereof and remove all persons therefrom and take exclusive possession thereof.

And finally, upon the violation of any of the terms, covenants or conditions of this lease by the party of the second part, or by any person acting by, through or under him, through purpose, neglect or failure to fairly and promptly comply therewith as specifically herein written, the term of this lease or lay, at the option of the party of the first part, or his duly authorized agent, shall expire and be at an end, and the said premises with the appurtenances and all improvements thereon, save only the machinery and personal property belonging to the party of

the second part, or those acting within the terms of this lease by, through or under him, shall be immediately within the possession and under the control of the party of the first part or his duly authorized agent and the party of the first part or his duly authorized agent may with or without demand enter upon said premises and dispossess any and all persons occupying the same with or without force and with or without process of law.

Each and every clause, covenant, term and condition of this agreement shall extend to the heirs, executors or administrators of the parties hereto and to the assigns or vendees of either.

In witness whereof the parties hereto have hereunto set their hands and seals, in duplicate, the day and year first above written.

JAMES WICKERSHAM. (Seal)

H. J. PATTERSON. (Seal)

In presence of

ALBERT R. HEILIG.

JOHN L. McGINN. [53]

Territory of Alaska,
Fairbanks Precinct,—ss.

This is to certify that on this 14th day of October, 1911, before me, the undersigned, a notary public in and for the Territory of Alaska, residing at Fairbanks therein, and being duly commissioned and sworn, there personally appeared James Wickersham and H. J. Patterson, to me known to be the individuals described in and who executed the within agreement and they each of them each for himself acknowledged to me that he signed and sealed the

same as his free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and notarial seal the day and year in this certificate first above written.

[Notarial Seal] ALBERT R. HEILIG,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks Therein.

The share, royalty, or rental to be paid to the lessor by the lessee, under the terms of the hereto attached lease, is hereby reduced from twenty-five per cent to twenty per cent upon the gross output of the ground described in said lease; in all other respects the lease to remain in its original form.

Dated at Fairbanks, Alaska, January 29, 1912.

JAMES WICKERSHAM.

By HENRY T. RAY,
His Atty. in Fact.

Witness:

ALBERT R. HEILIG.

Accepted.

(Indorsed: 35159. Entered. Compared. Agreement Between James Wickersham and H. J. Patterson. Dated October, 1911. Territory of Alaska, Fourth Judicial Division, ss. Filed for Record at request of H. J. Patterson on the 10 day of Nov., 1911, at 50 min. past 10 A. M. and Recorded in Vol. 5 of Leases, page 216, Fairbanks Recording District. John F. Dillon, Recorder. By C. E. Wright, Deputy.) [54]

Upon plaintiff's offer the following agreement between James Wickersham and H. J. Patterson, dated October 12, 1911, was admitted in evidence and marked Plaintiff's Exhibit "C."

Plaintiff's Exhibit "C"—Agreement, October 12, 1911, Between James Wickersham and H. J. Patterson.

AGREEMENT.

THIS AGREEMENT made and entered into on this 12th day of October, 1911, by and between James Wickersham, of Fairbanks, Alaska, the party of the first part, and H. J. Patterson, of the same place, party of the second part.

WITNESSETH: That whereas the party of the first part has agreed with the party of the second part to lease to the party of the second part for a term of four years that certain placer mining claim situate in Fairbanks Precinct, Alaska, and particularly described as the Pat Daly Bench and being situate on the left limit of Esther creek, and being the second tier bench claim about opposit creek claim number three below discovery on said Ester Creek, and more particularly described in the lease made and signed by the parties hereto at the moment this agreement is also made and signed; and

Whereas the said lease agreement refers to another contract or agreement between these parties as a part of the contract of lease; Now, it is agreed between the parties hereto that this agreement is the agreement mentioned and referred to in the lease between these parties signed by these parties at the same time

this agreement is signed and we agree that the consideration between the parties in the lease is also the consideration for this agreement, and that this agreement shall, as between these parties, be taken and is a part of said lease agreement and shall be enforced under all the terms of the lease agreement as if it were written in the lease agreement.

It is agreed by the parties hereto, and the party of the second part herein agrees as a part of the consideration of the lease, that he will employ the attorney's Heilig and [55] McGinn, at his own expenses and costs, and that he will at his own expense and cost bring or defend all such suits in court or elsewhere as is necessary to protect and defend the Pat Daly location of the said placer mining claim, mentioned in this and the lease agreement, from all claims of every kind now made against the same in opposition to the right and title of the parties hereto, and specially from all claims of the Happy Home Association location which overlaps said claim, and the claims of some fraction located overlapping the same by other parties, all of which claims are subsequent to the location of the Pat Daly Bench made thereon on December 1, 1905; the party of the second part agrees to pay all the costs of such litigation in all courts and places, including witness' fees, attorney's fees, appeals and other proceedings until said conflicting claims are defeated and the title thereto is cleared from said claims and each of them. It is agreed that no part of the expense of any such litigation shall be paid by the party of the first part, and no part of his said property or the output thereof

shall be held liable therefor in any way whatever; although it is agreed that the party of the first part shall be, when necessary, a party to the said litigation; it is further agreed by the party of the first part that he will act as an attorney in aid of the parties hereto, in all such suits and proceedings, and that he will make no charge therefor so long as the party of the second part shall perform his part of this agreement, but it is expressly understood that the party of the first part shall not be required to give any time or attention thereto when it will conflict with his duties as Delegate in Congress from Alaska; it is also understood and agreed that the party of the first part shall always be consulted and advised with in respect to said suits and the character of the defense or attack which shall be made in the litigation, and that he will aid and [56] advise with the said attorneys as fully as his said duties will allow.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year in this agreement first above written.

JAMES WICKERSHAM. [Seal]

H. J. PATTERSON. [Seal]

In the presence of:

ALBERT R. HEILIG.

JOHN L. McGINN.

Territory of Alaska,
Fairbanks Precinct,—ss.

THIS IS TO CERTIFY that on this 14 day of October, 1911, at Fairbanks, Alaska, there personally appeared before me, the undersigned, a notary public

in and for the Territory of Alaska, residing at Fairbanks, therein, the above-named James Wickersham and H. J. Patterson, who are each personally known to me to be the persons who signed the foregoing agreement and who each acknowledged to me that he signed the same freely and voluntarily and for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and notarial seal the day and year in this certificate first above written.

[Seal] ALBERT R. HEILIG,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks, Alaska.

[Endorsed]: Agreement Between James Wickersham and H. J. Patterson. Dated October, 1911.
[57]

Upon plaintiff's offer the following deed from James Wickersham to H. J. Patterson was admitted in evidence and marked Plaintiff's Exhibit "D."

**Plaintiff's Exhibit "D"—Deed, October 14, 1911,
James Wickersham to H. J. Patterson.**

THIS INDENTURE made the 14th day of October, in the year of our Lord one thousand nine hundred and eleven, BETWEEN James Wickersham, the party of the first part, and H. J. Patterson, the party of the second part,

WITNESSETH That the said party of the first part, for and in consideration of the sum of One dollar lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged,

has granted, bargained, sold, remised, released and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns.

An undivided one-quarter interest in and to that certain Bench placer mining claim situate in the Fairbanks precinct, Alaska, on the left limit of Ester Creek, and known as the Pat Daly bench placer mining claim, and being the second bench claim on the left limit and about opposite of No. 3 creek claim below Discovery on said Ester Creek, and located by Pat Daly on December 1st, 1905.

Said conveyance is made in consideration of the doing of the assessment work thereon by the vendee in the year 1910, in compliance with the United States Statute.

TO HAVE AND TO HOLD all and singular, the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES WICKERSHAM. [Seal]

Signed and executed in the presence of

ALBERT R. HEILIG.
C. E. WRIGHT.

United States of America,
Territory of Alaska,—ss.

This is to certify: That on this 14th day of October, A. D. 1911, before me, the undersigned, a Notary

Public in and for the Territory of Alaska, duly commissioned and sworn, personally came James Wickersham, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Notarial Seal] ALBERT R. HEILIG,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks. [58]

(Indorsed): 35158. Quitclaim Deed. From James Wickersham to H. J. Patterson. Dated _____, 19__. United States of America. Territory of Alaska, ss. Filed for Record at Request of H. J. Patterson on the 10 Day of Nov., 1911, at 45 Minutes Past 9 A. M. and Recorded in Volume 15 of Deeds, page 445. Records of Fairbanks Precinct, Territory of Alaska. John F. Dillon, Recorder. By C. E. Wright. [59]

Upon plaintiff's offer the following lease from H. J. Patterson to H. C. Hamilton was admitted in evidence and marked Plaintiff's Exhibit "E."

**Plaintiff's Exhibit "E"—Lease, November 27, 1911,
Between H. J. Patterson and H. C. Hamilton.**

This indenture of lease made and entered into this 27th day of November, 1911, by and between H. J. Patterson of Fairbanks, Alaska, as party of the first part, and H. C. Hamilton of the same place, as party of the second part, witnesseth:

Whereas by indenture of lease dated October 12, 1911, James Wickersham did lease, let and demise unto the said H. J. Patterson that certain placer mining claim known as the "Daly Bench," situate on the left limit of Ester Creek, second pier, about opposite creek claim number three below discovery on said creek, in the Fairbanks Recording District, Alaska, for the term commencing October 12, 1911, and ending October 12, 1915;

And whereas said James Wickersham has consented to the subletting of said demised premises by the said H. J. Patterson to the said H. C. Hamilton upon the terms and conditions in said lease set forth;

Now therefore this indenture witnesseth that the said H. J. Patterson does hereby lease, demise and sublet unto the said H. C. Hamilton all of the placer mining claim above described, including all his right, title and interest therein held by the said H. J. Patterson as lessee of the said Wickersham and in his own right as owner of an undivided one-fourth part of the title to said mining claim, to have and to hold unto the said H. C. Hamilton for and during the term commencing this day and ending October 12, 1915, upon the same terms, conditions and covenants and subject to the same terms and conditions as in said lease from James Wickersham to said H. J. Patterson set forth, excepting, however, that the said H. C. Hamilton, shall pay as royalty and rental as such lessee twenty-five per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said demised premises to the said James Wickersham, and shall pay in addition thereto five

per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said premises to the said H. J. Patterson, but in all other respects the terms, covenants and conditions of said lease from Wickersham to Patterson shall be binding upon the said H. C. Hamilton with the same force and effect and to all intents and purposes as if he were a party named as lessee in said lease.

And the said H. C. Hamilton hereby agrees to comply with and perform all the covenants and conditions in this lease contained and as well those contained in said lease from Wickersham to Patterson to the same extent and effect as if they were fully set out and repeated in this indenture, and to that end said lease and the terms, covenants and conditions therein referred to and hereby referred to and made a part of this lease.

In witness whereof the parties of the first and second part have hereunto set their hands and seals this 27th day of November, 1911.

H. J. PATTERSON. [Seal]
H. C. HAMILTON. [Seal]

In presence of

ALBERT R. HEILIG.
G. B. ERWIN. [60]

District of Alaska,
Fourth Division,—ss.

Before me the undersigned authority personally appeared H. J. Patterson and H. C. Hamilton, each of whom are personally known by me and known by me to be the individuals described in and who executed foregoing instrument, and each of them duly

acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and affixed my official seal at Fairbanks, Alaska, this 27th day of November, 1911.

[Notarial Seal] ALBERT R. HEILIG,
 Notary Public, District of Alaska.

I hereby consent to the subletting of the mining ground described in the lease referred to.

JAMES WICKERSHAM.

By HENRY T. RAY,
His Atty. in Fact. [61]

Upon plaintiff's offer the following deed from H. J. Patterson to Mariam A. Patterson was admitted in evidence and marked Plaintiff's Exhibit "F."

**Plaintiff's Exhibit "F"—Deed, November 27, 1911,
H. J. Patterson to Mariam A. Patterson.**

THIS INDENTURE made and entered into this 27th day of November, A. D. 1911, by and between H. J. Patterson, of Fairbanks, Alaska, party of the first part, and Mariam A. Patterson, of the same place, party of the second part,

WITNESSETH: That the party of the first part, for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, hath, granted, bargained, and sold, conveyed, remised, released and quitclaimed, and by these presents doth grant, bargain, sell, convey, remise, release

and forever quitclaim unto the said party of the second part, her heirs and assigns, all his right, title and interest, being an undivided one-fourth interest of, in and to that certain bench placer mining claim situate in the Fairbanks Precinct, Alaska, on the left limit of Ester Creek, and known as the Pat Daly bench placer mining claim, being the second bench claim on the left limit and about opposite No. Three (3) creek claim below Discovery on said Ester Creek, and located by Pat Daly on December 1st, 1905;

TO HAVE AND TO HOLD the same, together with the appurtenances and improvements thereon, to and unto the said party of the second part, her heirs and assigns forever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal this the day and year first above written.

H. J. PATTERSON. [Seal]

Signed, sealed and delivered in the presence of

G. B. ERWIN.

F. R. CLARK.

United States of America,
Territory of Alaska,
Fairbanks Precinct,—ss.

THIS IS TO CERTIFY that on this 27th day of November, A. D. 1911, before me, the undersigned, a notary public in and for the Territory of Alaska, duly commissioned and sworn, personally came H. J. Patterson, known to me to be the person described in and who executed the foregoing quitclaim deed, and who acknowledged to me that he executed and

delivered the same freely and voluntarily, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF I have hereunto set my notarial seal and hand the day and year in this certificate first above written.

[Seal] G. B. ERWIN,
A Notary Public in and for the Territory of Alaska.

Filed for record: 1 day of December, 1911, at 30 min. past 9 A. M.

JOHN F. DILLON,
Recorder.
By C. E. Wright,
Deputy. [62]

Upon plaintiff's offer the following agreement was admitted in evidence and marked Plaintiff's Exhibit "G."

Plaintiff's Exhibit "G"—Agreement, November 8, 1911, Between M. Wagner et al. and James Wickersham et al.

THIS AGREEMENT made and entered into on the 8th day of November, A. D. 1911, by and between M. Wagner, C. Wichman, G. Wheeler, M. Beegler and E. M. Horner, parties of the first part, and James Wickersham and H. J. Patterson, parties of the second part, all of Fairbanks Precinct, Alaska,

WITNESSETH: That the parties of the first part did on or about June 6th, 1908, locate an association placer mining claim or sixty acres, or thereabouts, situate in the Fairbanks Mining District of Alaska, second tier bench off of Eva Creek opposite 2, 3 and 4 creek claims, to be known as the Happy Home Association, described as follows, to wit:

Commencing at this stake south east post and running 2600 feet in a northerly direction, then a thousand feet in a westerly direction, then 2600 feet in a southerly direction, then 1000 feet in an easterly direction to stake of beginning, joining second tier bench off of Ester Creek opposite 3 and 4 below left limit;

and the location certificate of which was filed for record Sept. 1, 1908, at 45 min. past 1 P. M., and recorded in the office of the recorder in said precinct on that day in Vol. 10 of locations notices and recorded at pages 174 and 175 therein; and subsequently the parties of the first part owners leased so much of said ground as is hereinafter described as overlapping the Pat Daly claim to E. M. Horner, lessee; that on the 1st day of December, 1905, Pat Daly located a placer claim in said Fairbanks Precinct on Ester Creek, a tributary of Cripple Creek, described as follows:

A second tier bench on left limit opposite No. 3 below Creek Claim, calls for 600 feet upstream or west and 400 feet downstream or east from the initial post and 872 feet back or north from lower right limit corner, thence 1000 feet upstream to upper left limit corner, and thence 872 feet back to upper left limit corner;

that stakes were set to mark the boundaries of said claim but were not exactly the distances mentioned in the notice; that discovery and assessment work were done on said claim, and the location notice was filed for record in the office of [63] the recorder in said district on February 21st, 1906, and same recorded in

Vol. 7 of Locations notices page 137; that thereafter the title to said premises was conveyed to and the same is now in the names of the parties of the second part, as owners and lessees; that the claim so located by the parties of the first part overlaps the claim so located for and owned by the parties of the second part as shown on that map of the survey thereof made by C. E. Davidson on the 29th day of September, 1911. That the parties hereto have compromised their differences in respect to the said overlap of the Daly Claim by the Happy Home Association claim, and in consideration thereof the parties of the first part do hereby abandon all right, claim, or title to the whole of the said Pat Daly claim as surveyed and located on the ground from stake to stake by the said C. E. Davidson survey of said Sept. 29th, 1911, and in consideration of the conveyance to them of the seventy-five feet strip hereinafter made by the parties of the second part to the parties of the first part, the parties of the first part do hereby sell, assign, set over and quitclaim to the parties of the second part, in the proportions as they now claim the same, the whole of the ground within the said Pat Daly claim as shown in said C. E. Davidson survey of said Sept. 29th, 1911; and in consideration of such conveyance to them the parties of the second part do hereby sell, assign, set over and quitclaim to the parties of the first part, in the proportions as they now claim the same, a strip of ground off the upper end of the Pat Daly claim, running up and down the general course of Ester Creek, and running seventy-five feet wide parallel to the northerly line of said

claim as shown on the C. E. Davidson survey of said Sept. 29th, 1911, the same to be surveyed and marked off by said Davidson as soon as he can hereafter do the work; the parties of the second part agree that the parties of the first part may permit the water and tailings from the said seventy-five foot strip and the land immediately adjacent and above where said E. M. Horner is now working [64] to flow upon the said Daly claim, but the parties of the first part and their lessees will impound the said tailings with brush and other material so as to pile the same in a good and workmanlike manner on their own ground and as little as practicable on the ground belonging to the parties of the second part. Water reaching the ground of the parties of the second part may be used by them in mining.

IN WITNESS WHEREOF the parties hereto have set their hands and seals at Fairbanks, Alaska, on the day and year first above written.

M. WAGNER,

CHRIS WICHMAN,

GEO. WHEELER,

M. BEEGLER by WHEELER,

E. M. HORNER & CO.,

Per E. J. HORNER,

Parties of the First Part.

JAMES WICKERSHAM,

H. J. PATTERSON,

Parties of the Second Part.

Witnesses:

C. E. DAVIDSON,

J. E. COFFER.

Territory of Alaska,
Fairbanks Precinct,—ss.

This is to certify: That on this 8th day of November, A. D. 1911, there personally appeared before me, the undersigned notary public, the above-named persons, who are each known to me to be the persons who signed the foregoing instrument and who each signed the same in my presence and who each acknowledged to me that he signed the same freely and voluntarily and for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and notarial seal on the day and date in this certificate first above written.

[Notarial Seal] JOHN E. COFFER,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks, Alaska. [65]

[Indorsed]: 35160 Entered, compared, indexed.
Dated November 8th, 1911. M. Wagner et al. and
James Wickersham et al.

Deed. (Note: Words "compromise agreement" marked out in pencil and word "Deed" written above same in pencil.)

Territory of Alaska,
Fourth Judicial Division,—ss.

Filed for record at request of H. J. Patterson on the 10 day of Nov., 1911, at 10 A. M., and recorded in

Vol. 15 Deeds, page 446, Fairbanks Recording Precinct.

JOHN F. DILLON,
Recorder,
By C. E. Wright,
Deputy.

Upon defendants' offer the following note was admitted in evidence and marked Defendants' Exhibit 1.

Defendants' Exhibit 1—Note, October 19, 1905, H. J. Patterson et al. to Mrs. H. J. Patterson.

\$500.00 Dawson, Y. T., Oct. 19, 1905.

Nine months after date we promise to pay to Mr

H. J. Patterson Five hundred and 00-100 dollars.
Value received, at the rate of 2 per cent per month.
Dated July 12, 1906.

Due July 19, 1906.

H. J. PATTERSON,
D. G. HOSLER. [66]

Upon defendants' offer a pass-book issued by the Bank of British North America to Mariam A. Patterson was admitted in evidence and marked Defendants' Exhibit 2, of which the following is a copy:

**Defendants' Exhibit 2—Pass-book, Bank of British
North America to Mariam A. Patterson.**

THE BANK OF BRITISH NORTH AMERICA.

In Account with Mrs. H. J. PATTERSON.

Date.	Particulars.	Dr. Cheques.	Cr. Deposits.	Dr. or Cr.	Balance.	Ledger Keeper's Initials.
1905.						
Sep 2,	Dep		300.	Cr.	300.	A M
11,	c		850.	1150.		A M
21,	c		350.	1500.		A M
Oct 2,	c		443.	1943.		A M
	200.					
	300.					
	250.					
	50.			1143.		
	180.			963.		A M
	15.75					
	75.					
	200.					
	7.50					
	50.					
	10.					
	50.					
	200.			354.75		A M
	25.			329.75		A M
	8.50					
	35.					
	38.75					
	31.55					
	25.			190.95		A M
	10.			180.95		A M
						[67]

Upon defendants' offer a pass-book issued by the Washington-Alaska Bank to Mariam A. Patterson was admitted in evidence and marked Defendants' Exhibit 3, of which the following is a copy:

Defendants' Exhibit 3—Pass-book, Washington-Alaska Bank to Mariam A. Patterson.

WASHINGTON-ALASKA BANK.

In account with Mrs. MARIAM A. PATTERSON.

Dr.	Deposits.	Checks.	Cr.
1910		Checks as per list	
Aug. 11.	300.00	4 vouchers Ret'd 315.	
15.	475.98	Balance,	460.98
			775.98
	775.98		
		Checks as per list	
1910		8 vouchers Ret'd 320.25	
Nov. 9, Balance, 460.98		Balance,	140.73
			460.98
	460.98		

1911

Jan. 4, Balance, 140.73

Upon defendants' offer the following check was admitted in evidence and marked Defendants' Exhibit 4.

**Defendants' Exhibit 4—Check, September 21, 1910,
Mariam A. Patterson to Fred Craig.**

Fairbanks, Alaska, Sept. 21, 1910.

WASHINGTON-ALASKA BANK.

Pay to the order of Fred Craig, \$225.00, Two hundred and twenty-five 00-100 Dollars.

MARIAM A. PATTERSON.

Which check is indorsed with the name "Fred Craig" and the name "Fairbanks Banking Co.," and has perforations thereon reading, "Paid 9-23-10."

[68]

Testimony of H. J. Patterson, for Plaintiff.

Plaintiff called the defendant, H. J. PATTERSON as a witness, who being duly sworn testified as follows:

On the 27th day of November, 1911, I made the deed marked Plaintiff's Exhibit "F"; my books at that time showed me to be indebted about \$32,000. It would be pretty hard to get an accurate value of my property at that time; I had the property listed in the bankruptcy schedules and the lease on the Last Chance Association; the latter had a market value at that time; the lease was assigned about ten days afterwards; a receiver has been appointed just before the execution of the deed and before I assigned the lease to the men. We had tried almost every means by which work under the lease could be carried on, without success, and finally a proposition came up that 25 of the laborers were willing to take over the proposition. Some of the creditors were willing to furnish supplies to these laborers and the owners of the mining claim were also willing

(Testimony of H. J. Patterson.)

to raise money to pay off some of the laborers that were not going into the proposition, and they paid them off at fifty cents on the dollar. The 25 laborers undertook to operate the mining claim under my lease but they made a miserable failure of it.

Testimony of E. R. Peoples, for Plaintiff.

Plaintiff thereupon called E. R. PEOPLES as a witness, who testified as follows:

I am a merchant in Fairbanks, acquainted with H. J. Patterson, and knew him on November 27, 1911; I was furnishing him general supplies while he was conducting his mining operations on Last Chance Association claim on Engineer creek; in the latter part of November, 1911 he owed me approximately \$4000. I knew J. Stocker; he was boarding H. J. Patterson's men under a contract with him; he is in Juneau now. I furnished supplies to Stocker, groceries, etc. I was at a meeting of creditors of H. J. Patterson in the latter part of November, 1911, in McGowan & Clark's office, which Mr. Patterson attended, at which his affairs and the amount of his indebtedness was discussed; he stated at the time that he couldn't take up the bills and continue working without assistance and it was apparent that the labor was bothering him for money and they were trying to perfect arrangements with the owners and the laborers whereby they [69] would take it over and continue to work it; the lay was to be out of Mr. Patterson's hands. I have never been able to collect my money from Mr. Patterson. There was a suit instituted in my name for

(Testimony of E. R. Peoples.)

the appointment of a receiver on that lease; Mr. Patterson assigned the lease to the laborers. At that meeting in McGowan & Clark's office Mr. Patterson stated that he didn't have the money to pay his men and that he couldn't keep them unless he was able to pay them.

On Cross-examination.

When I said I have never been able to collect my money from Mr. Patterson I meant the balance still due me; he made a few payments on account. There was a check for \$1,000 that he gave me which was not paid; I presented it to the bank and it refused payment, not sufficient funds; my confidence in Mr. Patterson was very much shaken by his failure to carry out his promises regarding payments on his account so my instructions were to get the check to the bank as soon as possible before other checks were got in. I was aware that the only means Mr. Patterson had at that time with which to pay these checks was the output of this Last Chance claim, and I felt from the amount of money we were receiving and the amount of supplies that were going to the claim that we were not receiving anywhere near what we should. Up to the time Mr. Patterson ceased these mining operations I received \$2,000 from him; however, in the meantime Mr. Patterson was making payments to me on Stocker's account. From October 18 to November 9, 1911, he paid me a total on both accounts of \$3,250. Stocker was a part owner of the Last Chance association.

(Testimony of E. R. Peoples.)

On Redirect Examination.

About a week after the \$1000 check was received and turned down I had a conference with Mr. Patterson at my office; I asked him for security on the Esther property; I received the check on November 15; I knew then that Judge Wickersham had deeded a quarter interest in the Daly Bench on Eva creek to Mr. Patterson; before that deed was recorded I knew Mr. Patterson had some interest there but didn't know just what interest it was. Mr. Patterson stated that through an arrangement with Mr. Wickersham he was unable to [70] incumber the property in any way; that he had an agreement to that effect with him; I told him I knew, according to the records, that there was an interest in there; that he had a quarter.

At the time of the conference in McGowan & Clark's office the ground (Last Chance Association) was considered fair ground, good ground, but hard to work; we were not satisfied with Mr. Patterson's working.

Testimony of A. Bruning, for Plaintiff.

Plaintiff thereupon called A. BRUNING, as a witness, who testified as follows:

I am, and on November 27, 1911, was, cashier of the American Bank of Alaska. On that day I think Mr. Patterson was indebted to me as an individual; I believe he gave me a note; it seems to me it was for \$2,910. I am not quite sure now. He was indebted to the bank at that time on a note for \$2,089.57 and an overdraft of \$2,935.35. On Decem-

(Testimony of A. Bruning.)

ber 1, 1911, we credited his account with \$13.40; the balance was never paid. I don't think he was able on November 27, 1911, to pay what he owed me individually or to the bank, or he would have paid. I knew he had been mining on Last Chance. He gave the bank his note for \$1,408.30, which covered only a part of the overdraft; it is my recollection that this amount represented checks that had been drawn on the account for the purpose of paying some bills for property on Esther creek. He looked over his checks and made a list of them and said this was in payment of work that had been performed on Esther creek; I think he referred to a claim on Eva creek; he gave me a note for the part that had gone unto that claim on Esther creek.

On Cross-examination.

This first note of \$2,089.50 was given for a debt incurred by Mr. Patterson's operations on Esther creek in 1910, I think, when he was a partner with Tolbert on the Tolbert Bench; apparently the balance due the bank of \$1,513.65 that was not covered by the note of \$1,408.30. I should judge would be a debt incurred by him on Esther creek, as he made a segregation at his own suggestion. He was in partnership with Tolbert on Esther creek; if it was the Tolbert bench I don't know. It was in [71] 1910. My arrangement with Mr. Patterson was that if I gave him,—advanced him the money so he could get the shaft down to bedrock in his mining operations on Engineer creek, and begin to take out money, that I should get my money back first.

Testimony of Edward Stroecker, in His Own Behalf.

Plaintiff, EDWARD STROECKER, testified as follows:

In the year 1911 I was in the employ of Mr. Peoples; I knew Joe Stocker during that time; during that time Patterson was working on the Last Chance Association, I was endeavoring to collect money from Patterson and Stocker for Peoples. Stocker was running his own mess-house out there. I noticed in the paper or ascertained that James Wickersham had executed a deed to Mr. H. J. Patterson covering a quarter interest in the Daly Bench on Esther or Eva creek, I immediately told Mr. Peoples; subsequent to that time and before November 27, 1911, Mr. Patterson was in Peoples' office; it was on a Saturday preceding the Monday when the transfer was made; I saw a notice of the deed in the paper; when Patterson came in he went into the private office with Mr. Peoples and I immediately went to look up the records in the recorder's office and took a memorandum of the deed from Wickersham to Patterson, made a complete copy of it and I called him out of the private office and gave him this memorandum, gave it to Peoples, I think it was about Tuesday morning after that that I saw a notice in the paper stating that Mr. Patterson had transferred this same property to his wife.

Q. And how frequently, if at all, did you interview Mr. Patterson during the month of November relative to securing payment of the Peoples' account, or payments on the Peoples' account?

(Testimony of Edward Stroecker.)

A. We were after him rather strong, because it was getting late in the season and we knew about how the developments were going on. My partner was working out there and at [72] times I used to hear from him, and kept pretty fair track of it, and I knew that things were not just going right. He was thinking of quitting because he was afraid of a failure.

Testimony of John S. Junkin, for Plaintiff.

Thereupon plaintiff called JOHN S. JUNKIN as a witness, who testified as follows:

I became acquainted with H. J. Patterson in 1906 or '7; I am a machinist and engineer; I worked for Patterson on Ready Bullion creek and on Esther creek for Patterson & Tolbert and on Engineer creek on the Last Chance Association; at the last place I worked from February to the latter part of November, 1911, until he closed down; I saw Mr. Peoples out there in the latter part of October or early in November, 1911. Patterson told me Peoples was pressing him [73] for money; he said if they were squeezing him too hard that he would put the Eva creek property in his wife's name and let the creditors do what they wished about it, or something to that effect. And I asked him where the men were going to get off for their wages and he said he would see that all of the workmen got their wages if it took every cent that came out of the Eva creek property. I asked him why he didn't have it in his wife's name if he was afraid of it, and he said it would injure his credit still further if he

(Testimony of John S. Junkin.)

had; he told me that he had a fourth interest in the Daly Bench, also a seventy-five per cent lay on the whole claim, the Daly Bench on Eva creek, at the mouth of Eva; I think this was in the early part of November, 1911.

On Cross-examination.

He told me all the time that he owned a quarter interest in the Daly bench; said he got it for putting a hole to bedrock from James Wickersham; he didn't tell me he had a deed for it; he told me that in addition to the quarter interest he also had a 75 per cent lay on the whole claim; at one time he had promised me an interest in the lay but I didn't get it. I assigned my account to one of the claim owners and got my money. Mrs. Patterson was present at one time when he told me he had got a quarter interest in the bench for putting down a hole; that was in a cabin on Esther creek; she didn't say anything at all about it that I remember; he was talking something about going to put a working shaft upon it and seeing what was in it; he told me he had a lay on it; this was the night that Patterson and Tolbert had shut down; we were up in his cabin getting settled up for the work we had done on the Tolbert Bench, shortly before Christmas in 1910.

On Redirect Examination.

This conversation was in Mr. Patterson's cabin on Esther creek about 8 o'clock P. M. the night he shut down work on the Tolbert Bench; Mr. and Mrs. Patterson, an engineer named Mosier, and I think Mr. Tolbert and myself were present; Mosier asked

(Testimony of John S. Junkin.)

Mr. Patterson what they were going to do now, and Mr. Patterson said he was thinking of putting a working shaft down on his Eva creek property, and then he [74] told me about getting the quarter interest from Wickersham in the Daly bench; he said it lay right back over the hill here on the mouth of Eva creek; he pointed with his thumb toward Eva creek, where Eva creek ran into Esther. Mrs Patterson was sitting right there and heard what he said.

Testimony of H. J. Patterson in His Own Behalf.

Thereupon defendants called H. J. PATTERSON, one of the defendants, as a witness, who testified as follows:

I was married to Mariam A. Patterson, my co-defendant, on June 3, 1896; we lived together in the Yukon territory from 1901 or '2 until 1906, when we made a trip outside; we came to Fairbanks in the fall of 1907; during the year 1905 Mrs. Patterson was the owner of a placer mining claim in the Yukon Territory; it was a fraction between 45 and 46 Below Discovery on Bonanza creek; she acquired that property by staking under the ordinary laws. I saw her stake it; she wrote the location notice and signed it in the manner which was customary in that country; she staked other property besides. [75] She recorded the fraction on Bonanza creek in her name. The claim was staked by Mrs. Patterson in the customary way in which mining claims were staked there. After she had staked and recorded the claim she leased it to D. G. Hosler, a witness in

(Testimony of H. J. Patterson.)

this case, on a 65 or 70 per cent lay, the balance to the owner as royalty. I was interested with Hosler in actual mining on the fraction. Mr. Hosler paid to Mrs. Patterson about \$2,100 in royalties, on the proceeds of his mining operations on the fraction. She deposited the gold-dust she received as royalty in the Bank of British North America in Dawson. I have seen her pass-book. (Book handed witness.) This is the pass-book she received from that Bank in which Bank credited her deposits.

(Defendants offer pass-book in evidence. Admitted and marked Defendants' Exhibit 2.)

The pass-book shows that from September 2 to October 2, 1905, both dates included, Mrs. Patterson deposited in that bank \$1,943 as royalties received by her. I regarded this money, these royalties, as her own separate property at the time. Subsequently Mr. Hosler and I borrowed \$500 from Mrs. Patterson on one occasion and some more later on. In the Spring of 1906 we repaid to her all we had borrowed excepting the \$500; for that we gave her our note. (Paper marked Defendants' Exhibit 1 handed witness.) This is the note we gave her. Afterwards we paid this note to her, with part of the interest it calls for. We paid her \$600 altogether. At or about that time Mrs. Patterson received other moneys from Hosler. I deposited these moneys that she received on the note and from Hosler for her and to her account in the Washington-Alaska Bank. (Book shown witness marked Defendants' Exhibit 3.) This is the bank-book is-

(Testimony of H. J. Patterson.)

sued by that bank when this deposit was made to her account and is issued by the Washington-Alaska Bank of Fairbanks, Alaska, in account with Mrs. Mariam A. Patterson. Mr. Hosler and I operated a placer mine on Ready Bullion Creek in 1909 and 1910; our operations were profitable, and with our profits therein we paid off that note. [76] At that time I had money on deposit in the American Bank of Alaska and didn't owe anything. This money which I deposited to the credit of Mrs. Patterson I considered her property. Her deposits were made on August 11 and 15, 1910, and amounted to \$775.98.

About two years before that I had mined near the Daly Bench claim and got the idea that some day I would do some prospecting up that way; I had the use of a hundred horse-power mining plant, so I went to see Judge Wickersham about the Daly Bench; no holes had been sunk to bedrock on that claim at that time, and it was an unknown quantity; nothing had been found on it. I asked Wickersham for a half interest and a lay on the claim; he refused but offered me a quarter interest and a 75% lay on the whole claim; we agreed on that proposition and he told his stenographer to make out the papers. I went home that night and told Mrs. Patterson about my conference with Wickersham and his proposition. Then I made the proposition to her that if she wanted to pay for the sinking of the drill hole, or the hole to bedrock, that she could have the quarter interest; if we struck pay I would need all the money I had to open up the ground; and she was willing to take

(Testimony of H. J. Patterson.)

the chance. So I went immediately and made arrangements with the drill-men and took Mr. Craig up on to the ground and showed him where I thought was the most likely place to sink the hole. I then went to Fairbanks and signed up the papers with Judge Wickersham for the quarter interest and the lease. (Document marked Plaintiff Exhibit "A" shown witness.) This is the agreement that I entered into with Wickersham. I made an agreement with my wife that if she would at her own expense have this work done which was required under the agreement with Wickersham in order to secure that quarter interest in the Daly Bench that the title to the quarter interest when received from Wickersham should be vested in her. When I came back from Fairbanks the drill-men already had one hole to what they thought was bedrock; I didn't think so; so we moved over 200 feet further and sank another hole with the knowledge and agreement of Mrs. Patterson and at her expense; she paid for these two holes by her check. (Check on Washington-Alaska Bank, dated September 1, 1910, to the order of [77] Fred Craig for \$225 shown witness.) This is the check I gave to Fred Craig, with Mrs. Patterson's signature to it for the sinking of those holes to bedrock. This \$225 was in no sense a loan of money to me. I never repaid it nor any part of it to her. After Mrs. Patterson had paid the purchase price of this quarter interest I always thereafter considered it to be her property. After this work was performed I came to Fairbanks and found Wickersham had gone to

(Testimony of H. J. Patterson.)

Washington as delegate from Alaska. He returned to Fairbanks some time in 1911 by boat. I did nothing under the lease part of the agreement with the result that Wickersham forfeited the lease, in the Summer of 1911. I then secured a new lease but had to consent to a great many things before I got it. I considered a 75% lay on the ground very much more valuable than a quarter interest in the property; I was particularly concerned about the lease on the property. Afterwards I was out on the claim with Wickersham and showed him the deepest drill hole and the drill cuttings to satisfy him that that hole went to bedrock. He told me, "You have forfeited your lease but I will give you the quarter interest any time, but if you get the new lease you will have to undertake certain obligations"; those obligations are set forth in the lease of October 12, 1911, and the auxiliary agreement made at the time, the papers already in evidence marked Plaintiff's Exhibit "B" and Plaintiff's Exhibit "C." The writing attached to the front page of the lease, dated January 29, 1912, signed "James Wickersham by Henry T. Ray, his Atty. in Fact," was not a part of the lease when it was executed.

(Plaintiff here admitted Henry T. Ray's authority to execute the writing.)

Instead of going to work under the lease of September 19, 1910, I mined on the Tolbert Bench; I commenced there, I think, on Nov. 2, 1910; I rented a mining plant; at that time I had a few hundred dollars in bank and owed nothing. We mined on

(Testimony of H. J. Patterson.)

the Tolbert Bench about six weeks, and then abandoned it. After that I commenced mining on the Last Chance Association on Engineer creek. I had no money but I made arrangements to raise some, and was offered supplies [78] by Peoples and machinery by Brumbaugh & Hamilton. I had an arrangement with Mr. Bruning, cashier of the American Bank of Alaska, under which he honored my checks until the first cleanup. I deposited my cleanups in that bank, that is the total output less the royalty paid to the owners. During November, 1911, I deposited in that bank a total of \$21,293.89, the last deposit in that month being on November 27, amounting to \$5,533. During that month as near as I could estimate I was clearing from one hundred to two hundred dollars a day. It was my belief then that if I carried on my mining operations in continuation of what I had already done that the thing could be pulled out clear of everything and possibly a nice profit. I ceased operations on Last Chance Association because Mr. Bruning seized the last cleanup of \$5,533 deposited on November 27, and applied it to an overdraft and turned down all the checks that I had issued against it and refused to honor any checks further. I executed the deed to my wife before I had learned that the bank had appropriated all of the last cleanup.

After Wickersham got back to Fairbanks in the fall of 1911 I went to see him for the purpose of getting the deed to the quarter interest and to get a new lease. I asked him to make the deed to Mrs.

(Testimony of H. J. Patterson.)

Patterson, because, as I told him, she had paid for sinking the drill holes. He didn't do that and stated as his reason, "I don't want to mix things up. I want to do business with you. I will give you the deed and you can make the deed to whoever you like." I did not do any mining myself on the Daly Bench in 1911, under the Wickersham lease; there was a controversy over the title to most of that claim, which was compromised, and I had all I could possibly handle at that time on Engineer creek. So I transferred or assigned the lease to Henry C. Hamilton. I received nothing for the assignment of that lease except a promise. Hamilton subleased to the Smith Brothers the upper 250 feet and afterwards went in as a partner with them in working it. He also worked the next, the middle 300 feet. At no time did I receive anything from Hamilton as the proceeds of mining operations carried on by himself or with the Smith [79] Brothers, and I never demanded any part of the proceeds of the royalty when Mr. Hamilton was called upon to pay. Under the assignment of lease which I made to Hamilton there was a provision that he should pay as royalty to Wickersham twenty-five per cent of the gross output, but there was never any understanding or agreement with him that I was to receive any part of that royalty. Afterwards the amount that was to accrue to Wickersham under his lease was reduced by Wickersham to twenty per cent. This reduction was made by him on January 29, 1912, and was made because there had not anything been struck on the

(Testimony of H. J. Patterson.)

ground at the time, no pay struck on the ground at the time. Up to that time the laymen had put a working shaft to bedrock and drifted 117 feet one way and 40 or 50 feet the other. I think it was a week or ten days after January 29, 1912, that pay was struck on the Daly Bench. I never received any of the five per cent royalty which was reserved to me under this lease to Hamilton. My understanding was that that five per cent was to go to the quarter interest that Wickersham gave to me. The first cleanup of gold made on that ground was in May, 1912, after the water began running. Prior to that time no royalty had accrued under the lease. At the first cleanup Henry T. Ray was present, representing Wickersham; Mr. Hamilton, and Mrs. Patterson and I were also present. Mrs. Patterson then demanded her share of the cleanup, her royalty, five per cent upon the ground that she was the owner of the quarter interest. She did not receive it. Mr. Hamilton said that Mr. Clark had told him there were proceedings started for an injunction and that he didn't feel like that he could give it; and the Smith Brothers they were going to give it to her anyway; and I was afraid of complications and I didn't want to get the others in wrong, and I asked Mr. Hamilton to telephone Mr. Heilig and find out; and he telephoned to Mr. Heilig and told me that Mr. Heilig said there was an injunction against her receiving any money or any royalty. No injunction papers had been served on Mrs. Patterson, nor on Mr. Hamilton at that time.

(Testimony of H. J. Patterson.)

Mr. Heilig here stated that the order had been made while he [80] was present in court as attorney for defendants.

At that cleanup I did not demand any part of the royalty nor at any other cleanup. I did not consider myself entitled to any part of the royalty at any of the cleanups. After I received the deed for the quarter interest from Wickersham I told my wife that he had made the deed to me and that I was very much disappointed the way the thing had to be done and everything, and tried to explain it to her the best I could. I told her I would make a deed to her the next time I went to town. The deed from Wickersham to me was not delivered to me by him until after the settlement of the controversy regarding the title to the ground; and on the 10th of November, 1911, after it was settled, Wickersham and I went to the recorder's office and recorded the agreement settling the controversy regarding the title, and the lease to me and the deed to me. I paid for the recording. Prior to that time I didn't have the deed. On the 27th day of November, 1911, I executed a conveyance of this quarter interest to my wife.

Q. State why you didn't convey it any sooner after you had got the deed.

A. Well, I was only in town I think once with a cleanup between that time, and I was so very busy that I didn't simply get around to it. And I was also dealing with Mr. Hamilton in regard to taking him in with me on the lease on Last Chance, giving him a half interest in the lease on Last Chance and

(Testimony of H. J. Patterson.)

a half interest in the lease on the Daly Bench, and it was the second cleanup from the time the deed was made that I made an appointment—Mr. Hamilton was very busy. He was working on Little El Dorado at the time. I made an appointment, and he came in, and we went over and looked at the Daly Bench property, and when he refused to go in on the Engineer property, then I gave him a [81] lease. He came in that evening and I was in a hurry to get back to my work on Engineer, because I had been away all day. I came to Mr. Heilig's office and asked Mr. Heilig to make a lease to Mr. Hamilton. I walked in to Guy Erwin's office next door, and asked him to make a deed, and left the deed with Guy Erwin to be recorded. I was anxious to get out to Engineer as soon as possible.

Q. You executed this deed, Plaintiff's Exhibit "F"? (Hands same to witness.)

A. Yes, sir.

Q. After you had executed it, you delivered it to Guy Erwin, with instructions to have it recorded?

A. Yes. With instructions to have it recorded.

Q. I will ask you to state whether you intended at that time to surrender and did surrender all control of the quarter interest to your wife. A. Yes, sir.

The deed was recorded on December 1st, and a day or two after it was recorded he gave it to me or sent it out to me and I gave it to Mrs. Patterson as soon as I got home. At the time I made the deed to Mrs. Patterson I did not have any intention to hinder, delay or defraud my creditors. I conveyed

(Testimony of H. J. Patterson.)

the legal title to this [82] property to my wife because I had promised to and because she had done the work, and she had asked me just a few days before. I refer to the original promise I had made her in the beginning that if she would pay for the sinking of the drill holes that I would deed her the quarter interest; that was in September, 1910, before the drill holes were sunk and the money paid. I never stated at any time in the presence and hearing of Mrs. Patterson that this quarter interest in the Daly Bench belonged to me; I did not state to John Junkin on the Tolbert Bench in the presence and hearing of Mrs. Patterson shortly after we quit work on the Tolbert Bench that I owned the quarter interest in the Daly Bench. I had a conversation with John Junkin on Engineer creek in regard to the lay. I never stated to John Junkin on Engineer creek that if my creditors continued to press me I would put my interest in the Daly Bench in my wife's name. At the time I got this second lease from Wickersham my wife and I were living on Engineer. Mrs. Patterson did not see any of the documents which were drawn up and signed by me and Wickersham with reference to the Daly Bench before they were executed. She did not see the lease that I made to Hamilton of the quarter interest before it was executed. I told her what I had done and she seemed to be very well satisfied with it. On two occasions I asked Wickersham to make this deed in Mrs. Patterson's name, the second occasion was when he came to make out the deed. I asked him to make the deed

(Testimony of H. J. Patterson.)

to her for she had paid for the sinking of the two holes. I received nothing from Mrs. Patterson at the time I made this deed to her, nor did at any time receive anything from her for this quarter interest. I never sold this quarter interest to her; I considered it merely a transfer; the consideration for the transfer to her of the legal title which stood in my name was because she had paid for the sinking of the drill holes. The paying of the expense of sinking the drill holes was what my agreement with Wickersham called for as the purchase price of the quarter interest, and it was upon that consideration that I agreed with my wife that if Wickersham made the deed in my name that I would transfer it directly to her. [83]

Cross-examination.

(By Mr. CLARK.)

Q. There was some question, Mr. Patterson, was there, as to whether the first hole went to bedrock?

A. Yes, sir.

Q. Between whom did that question or controversy arise? A. Between the drill men and I.

Q. When did it arise?

A. At the time of the sinking of it.

Q. When did you first discover it?

A. They had the hole down a hundred feet before I got up there, and it was out of proportion, and we had quite an argument over the fact that it was only 100 feet, and you couldn't be sure. I examined the cuttings, and so I asked them to move over and sink another hole.

(Testimony of H. J. Patterson.)

Q. The only reason you had them move to some other place was because that hole wasn't to bedrock?

A. Well, now, the real purpose—(interrupted).

Q. I am asking you if that was the reason for that. You have said that you examined the cuttings and it didn't look as though it was bedrock, and you had him move over. That was the only reason, was it, for having him move over; because of the fact that he hadn't reached bedrock?

A. The ground was soft, and they were afraid of sticking their drill, and they refused to go further in that hole.

Q. When did they refuse to go further?

A. That morning. [84]

Q. You didn't expect that you had to sink a hole to bedrock, and then go and do one hundred dollars worth of assessment work besides, did you?

A. I don't think so.

Q. You testified at the last trial, didn't you?

A. I did.

Q. You were under oath at that time, did you not?

A. Yes, sir.

Q. Was not this question asked you and this answer returned? (Reads:—)

“Mr. HEILIG.—Q. I will ask this witness to state what Judge Wickersham said in regard to your right to the transfer of the quarter interest.

Mr. CLARK.—We object as hearsay.

The COURT.—He may answer, subject to the objection.

A. Wickersham agreed to make a deed to the

(Testimony of H. J. Patterson.)

quarter interest. But, so far as continuing the lay, he would not do it, because conditions had changed, and, before I could get a new lease from Wickersham, I had to assume a lot of extra heavy duties that didn't occur in the first lease. But, if I wanted to drop the lease altogether, he offered to deed to me the quarter interest.

Q. (By Mr. HEILIG.) I will ask you whether you recollect any statement on his part, that he admitted that you had performed the conditions of the transfer.

Mr. CLARK.—We object as hearsay and leading.

The COURT.—Do you (to Mr. Clark) contend that he had not?

Mr. HEILIG.—They are basing their title on that very fact.

The COURT.—Objection overruled.

A. At the time we surveyed the ground during—When Wickersham came in here, I took Wickersham to the ground and showed him the drill holes and showed him the bedrock that had been dumped out, and he was satisfied that those holes went to bedrock.”

Did you at that time so testify, Mr. Patterson?

A. I believe I did. [85]

Q. Did you at that time also testify as follows? (Reads:)

“Q. You signed up what you called the agreement dated the 19th of September, 1910?

“A. Yes. And when I came back, he was down to bedrock in that first hole. He didn't find anything

(Testimony of H. J. Patterson.)

and Mr. Craig had had a good deal of experience in drilling claims on the creek up above, and we were talking about it and he suggested further over would be a better chance, and we went over to the left of the claim and started another hole, and that was put down 125 feet. The first one was 100 feet and the second one was 125 feet. They charged a dollar a foot."

Did you so answer to that? A. I did.

Q. Did you at that time remember about not having reached bedrock in the first hole?

A. I remember there was a difference of opinion as to whether it was to bedrock.

Q. Did you so state in your testimony?

A. I did not.

Mr. CLARK.—Now, Mr. Patterson, when did it first occur to you that this first hole hadn't reached bedrock, that is, to testify to it? Have you ever heretofore in the trial of this case— On the first trial of this case did you at any time mention the fact that the first hole hadn't got to bedrock? [86]

A. I don't think I did. I am not sure.

Q. Now, since this other trial, you have read the brief, haven't you, that was prepared on behalf of the trustee Mr. Stroecker to send to the Circuit Court of Appeals?

A. I don't think—I don't know as I read it.

Q. You have discussed with Mr. Heilig the proposition that we made in this case, that the first one hundred dollars that was expended completed the work so far as the Wickersham agreement was con-

(Testimony of H. J. Patterson.)

cerned? You have discussed that with him, haven't you? A. I don't think so.

Q. Did he not tell you that we were contending that the extra \$125 worth of work was merely a loan from your wife to you; that your contract was complete when you had performed \$100 worth of work?

A. No, sir.

Q. Has not that been discussed by you? Are you sure of that?

A. The matter of your (interrupted).

Q. That you understood that our position in the matter was that the first \$100 completed your contract, and the next \$125 if anything *would* a loan from your wife to yourself, as you had a lay on the ground. A. I never read that brief.

Q. But you understood that was our contention, did you not, Mr. Patterson? A. I believe I did.

Q. And you didn't understand that as our contention at the other trial, did you?

A. I think I did, or your (interrupted). [87]

Q. You know as a matter of fact that was not advanced at the other trial; that we didn't get an opportunity to advance it, don't you?

Q. Now, it is only since the last trial—it is only on this trial—this is the first time you have ever contended that there was any question about that first hole going to bedrock, isn't it? That is a fact, isn't it? A. I don't exactly understand.

Q. From the record of your examination on the former trial, I will ask you if these questions were

(Testimony of H. J. Patterson.)

not asked and these answers given by you at that time? (Reads:—)

“Q. Her agreement”—referring to Mrs. Patterson—“with you was that she should sink a hole to bedrock and be entitled to a one-quarter interest?

A. Yes, sir.

Q. Why did she sink two?

A. Well, it called for representation work. And I think it calls for two holes to bedrock and for representation work for 1910.”

You so testified at that time, did you not?

A. Yes, I think I did.

Q. Are the conditions changed any in regard to what actually happened since the last trial?

A. Nothing more than I remember of the conversation and the difference of opinion.

Q. You remember now better than you did two years and a half ago when this case was tried?

A. Only in regard to that bedrock in that one hole.

[88]

Q. This trial took place shortly after—within a few months after this transaction took place. Was your recollection better then, or is it better now, two years and half later?

A. Well, in regard to that hole I looked it up.

Q. Your recollection gets stronger, as time passes, in regard to it? A. No, not that particular point.

Q. How have you looked it up?

A. Well—(interrupted).

Q. Do you mean that you have discussed it with your wife? A. No, sir.

(Testimony of H. J. Patterson.)

Q. How have you looked it up?

A. I have discussed it with the drill-man.

Q. You have discussed it with the drill-man, and he has told you that that was the reason, has he?

A. No. In talking over the proposition, it recalled the conversation more than in the previous examination.

Q. In the first examination you had forgot that the first hole hadn't reached bedrock?

A. No. I didn't put it in, because—(interrupted).

Q. You didn't say anything about it.

A. I didn't say anything about the conversation.

Q. Were not these questions asked you and these answers given by you? (Reads:—)

“Q. How many feet down was the first hole they sunk? A. The first hole was I think 100 feet.

Q. How much did they charge you a foot?

A. A dollar a foot. [89]

Q. When that first hole was sunk, sufficient money had been expended for representation work, hadn't it? A. Well—(interrupted).

Q. Why was the second hole sunk? You have no explanation?

A. Well, to comply with that agreement, with the conditions.

Q. Can you point out any part of this agreement that would require a second hole? Would you like to look at it and see?

A. No. I don't care to look at it.

Q. Isn't it a fact that Mrs. Patterson at that time

(Testimony of H. J. Patterson.)

was handling your money and keeping it in her own name and writing out checks for your business on the 19th—(interrupted) ? A. No, sir.

Q. — of September, 1910 ? A. No, sir.

Q. Isn't it a fact that the sinking of those holes was your own personal business, and that you had her write out a check for your benefit ?

A. No, sir.

Q. Wasn't the second hole that was sunk on the Daly Bench merely for the purpose of doing prospecting under the lease ?

A. Well, no, I don't think it was.

Q. You don't think so ? A. No.

Q. What was it for then ?

A. Well, as I say, to fulfill the conditions.

Q. One hundred dollars had been spent on the first hole ?

A. One hole to bedrock to represent it, as representation work for 1910."

Did you so testify at that time ? A. Yes, sir.

Q. You remembered at that time that the hole was to bedrock, didn't you ?

A. Well—(interrupted).

Q. And now you testify at this trial to-day, and yesterday, that that hole hadn't reached bedrock ?

A. I didn't believe it did.

Q. You were not relying on anything you yourself remembered, [90] but from your conversation with the drill-man.

A. I remember the conversation with the drill-man.

(Testimony of H. J. Patterson.)

Q. Then, when you testified of your own knowledge that you had not reached bedrock, you were not testifying correctly, were you?

A. I didn't believe they were to bedrock.

Q. You remember that since you talked to the drill-man? A. Yes, sir.

Q. Were not these questions asked of you and these answers given on the last trial? (Reads:)

“Q. How much did you think it took for representation work?

A. Well, I didn't know for sure what the representation work—whether drill-holes would constitute it.

Q. You didn't know whether one hundred dollars was a sufficient amount at that time?

A. Whether 100 feet of drill-hole would count that.

Q. Well, now, if one drill-hole wouldn't count, why did you think two would?

A. Well, it would be enough. It would be sure to be enough.

Q. Didn't you know that the law only required one hundred dollars' worth of work to be done?

A. Well, possibly.

Q. And you knew that the first hole cost one hundred dollars? A. Yes.

Q. Still you thought if you drilled that first one that you had to drill a second one to comply with the agreement?

A. Well, I don't remember exactly. I didn't pay much attention to it, but to have enough done.”

Did you so testify at that time? A. Yes, sir.

(Testimony of H. J. Patterson.)

Q. And now you say that the reason the second hole was sunk was because you couldn't see bedrock in the first hole?

A. Well, I didn't believe it was really to bedrock.

Q. When didn't you believe that? [91]

A. At any time.

Q. But you had forgotten that at this other trial. You had forgotten all about that at the other trial, had you?

A. Yes, sir. I didn't take it into consideration.

Q. This trial took place on September 26, 1913. That would be just about two years after the transaction took place—about three years after the transaction took place? A. Yes.

Q. Is your recollection better now, almost six years after the transaction took place, than it was at that time? A. I don't know as it is.

Q. And you want the Court to understand now that the sole reason for sinking that second hole was because you didn't think you had reached bedrock in the first hole?

A. That was one of the reasons.

Q. Is that the only reason?

A. No. I wouldn't give it as absolutely the sole reason, but it was one of the principal reasons.

Q. You were not looking for the paystreak, but merely to get a hole to bedrock?

A. I wanted to be sure to get a hole to bedrock.

Q. What did you mean, Mr. Patterson, when you stated in answer to a question that was propounded to you on the other trial, when you said (reads):

(Testimony of H. J. Patterson.)

"He didn't find anything, and Mr. Craig had had a good deal of experience in drilling claims on the creek up above, and we were talking about it and he suggested further over would be a better change, and we went over to the left of the claim and started another hole, and that was put down 125 feet."

What did you mean by that—a better chance for what? [92]

Q. What did you mean by that, Mr. Patterson? Was it a great deal of experience in seeking bedrock, or sinking holes, or a great deal of experience in where to look for pay, or what?

A. Well, I don't know exactly what it was.

Q. You also had a lay on that ground at the same time, as shown by the records, Mr. Patterson, hadn't you? A. Yes, sir.

Q. And, according to the testimony you have given, Mrs. Patterson was to put up the money to sink the drill hole, because you needed the money that you had to put down a working shaft if you struck pay. Wasn't that it? A. Yes.

Q. Wasn't that second hole put down purely and simply for the purpose of trying to locate the pay-streak?

A. In the carrying out of that agreement.

Q. I am asking you if the sole purpose wasn't to locate the pay? A. No, sir, not the sole purpose.

Q. Isn't it a fact that you were satisfied and that you knew that you had a hole to bedrock in that first hole?

(Testimony of H. J. Patterson.)

A. No, I wasn't absolutely satisfied. When Wickersham and I were getting ready to sign up the contract I told him that Mrs. Patterson was to have the interest, and when the work was completed I asked him if the deed could be made out to her; after the work was all done and Wickersham came back the next year I asked him to make out the deed to her and he made practically the same excuse that he made before.

Mr. CLARK.—Q. Mr. Patterson, the lease from Wickersham to yourself, that is, the second lease, given in November, 1911, was executed on the 12th of October 1911 was it not? [93]

A. I think it was about that time.

Q. When was that lease delivered to you?

A. On the date of record.

Q. It shows that it was recorded, filed for record on the 10th day of November, 1911? A. Yes, sir.

Q. Was that the day it was delivered to you?

A. Yes, sir.

Q. That was after the settlement with the Happy Home people? A. Yes, sir.

Q. Then you assigned that lease to Henry Hamilton on what date? A. The 27th of November.

Q. Had you done any work under that lease between the 10th day of November, 1911, when it was delivered to you, and the 27th of November, 1911, when it was assigned to Mr. Hamilton?

A. I think the work done on the Daly Bench at that time would come under that clause mentioned in that lease whereby I was to regain possession of that

(Testimony of H. J. Patterson.)

ground or stand the expenses of it and the litigation with the Happy Home people.

Q. Now, Mr. Patterson, wasn't the litigation settled upon the day when that lease was delivered to you, that is, the difficulties with the Happy Home people settled on that day?

Mr. HEILIG.—You mean it had been settled by that day?

Mr. CLARK.—Yes. And consummated by written agreement on that day?

A. On the day it was delivered?

Q. Yes. [94]

A. Yes. That was settled then.

Q. Mr. Wickersham was put in possession of the property, other than the strip transferred to the owners of the Happy Home? A. Yes, sir.

Q. What further acts were necessary to be done to obtain possession of the property after that settlement with the Happy Home people?

A. Please read that.

Q. (Question read.)

A. Well, we were practically in possession of the ground at that time. You see, during the controversy with the Happy Home people, Judge Wickersham sent for the Smith boys from Ruby, because they had staked or helped Pat Daly stake the claim, and they were the only ones that knew where the stakes really were. And when they came up here, Judge Wickersham sent them out to the Daly Bench and they moved onto the Daly Bench, took possession of it and held possession of it until the culmination

(Testimony of H. J. Patterson.)

of this difficulty or controversy. Then on November 27 I assigned that lease to Henry Hamilton. Between the 10th day of November, 1911, and the 27th day of November, 1911, when I assigned the lease to Henry Hamilton, I did not do any work on the Daly Bench myself. During that time I had not performed any mining work nor built any cabins nor anything of that kind. I had agreed with [95] Wickersham to give George Smith a sixty per cent lease on that 250 foot strip, and when I made the transfer of the lease to Hamilton he also agreed to make the papers, something to that effect. I was to back Smith in a way. I was to furnish him credit and pay a certain amount of his expenses, pay the expenses up to that time, and when I was closed down and couldn't do that I told Smith that I would give him five per cent more and he could get somebody that could carry on and finance the proposition for him, and he agreed with me to pay back all of the money that I had expended there, because it was Last Chance money. After I was closed down on the Last Chance Association claim I did not do any more work *work* or spend any more money of the claim. I worked for Smith for wages, for Smith & Hamilton, a month or six weeks, maybe two months; I didn't expend any money there myself, I hadn't any to expend. At the time the lay from Wickersham was delivered to me I expected to go ahead and work a part of the ground myself. I couldn't say that Wickersham knew at that time that I was going to assign the lay to Hamilton, I don't know now. I

(Testimony of H. J. Patterson.)

think Hamilton and I got Henry Ray's consent to the lease at the time it was made. I think I testified at the former trial of this case that under the lease I had spent a good deal of money of my own on the Daly Bench prior to the time that I delivered the deed to Mrs. Patterson; that I couldn't say just how much; that I had to regain possession, help to regain possession of the ground in order to renew my lease; I was asked whether it was not something over \$1,400, and I answered that that was not all prior to the making of the deed, that work was continued through until January, the sinking of the shaft; we had put some men on there to regain possession of the ground, to hold possession of the ground, putting up buildings; that none of that money was Mrs. Patterson's. Hamilton agreed to carry out my agreement with Smith to sublet the lay on that upper 250 feet. I wouldn't say that I did not testify heretofore that it was understood between Wickersham and I when I got the lease that he would consent to a sublease to Hamilton. [96]

Q. After this transfer was made to Henry Hamilton of that lease from Wickersham, you recognized that he had stipulated in that agreement to fulfill all of the conditions that Wickersham had imposed upon you in that lease, didn't you?

A. Well, I tell you it was made in such a hurry that I didn't look at it carefully at that time?

Q. You knew that Henry Hamilton was, in other words, stepping into your shoes so far as that lease was concerned?

(Testimony of H. J. Patterson.)

A. Practically. I considered it so.

Q. Yet you continued working there until January, building buildings, didn't you?

A. Until January?

Q. Yes. A. No, I don't remember that.

Q. Didn't you continue sinking a shaft and building buildings up through January—December and January? [97]

A. I was trying to think when we moved over there.

Q. You can't answer that question.

A. I don't think I can.

Q. To refresh your memory, did you not testify in the former trial? (Reads:)

“That work was continued through until January—the sinking of the shaft. We had put some men on there to regain possession of the ground—to hold possession of the ground—putting up buildings.”

A. The Smith Brothers kept on working there, finishing the shaft and fixing up.

Q. At the time you had spent fourteen hundred dollars? A. Yes, sir.

Q. And when you turned the lease over to Henry Hamilton, two or three months before that, you were not to get anything for the lease. Is that right?

A. No, sir.

Q. What were you to get for the lease?

A. I was to get the difference between the Smith lease and the Hamilton lease, five per cent.

Q. You were to get a secret five per cent?

(Testimony of H. J. Patterson.)

A. Yes, sir.

Q. You are certain of that? A. Yes, sir.

Q. And there was a consideration then for your transfer to Henry Hamilton?

A. The promise, as I said. A promise of five per cent.

Q. That was your consideration for your transfer to Henry Hamilton, was it? A. Yes, sir.

Q. Then, that was the consideration for making the transfer to Henry Hamilton. [98]

A. One of the considerations.

Q. You testified at the last trial of this case, did you not, Mr. Patterson, and was not this question asked you and this answer returned? (Reads:)

“Q. After you got that lease, you assigned it to Mr. Hamilton for what consideration? What did Hamilton give you for it?

A. Well—I didn’t receive any money for it. No.

Q. What was the consideration, then, for your transfer to Hamilton?

A. There was no real consideration.”

Did you so testify at that time? A. I did.

Q. And yet you say now that the consideration was a secret five per cent that was to come from the Smith Brothers.

Mr. HEILIG.—Wait—(Interrupted).

A. Yes, sir.

Mr. HEILIG.—I object to counsel reading merely an extract. He should read all of the testimony on that subject.

(Testimony of H. J. Patterson.)

Mr. CLARK.—You can read it when your time comes.

Q. You testified before the Referee in Bankruptcy, didn't you, Mr. Patterson, at the first meeting of your creditors? A. Yes, sir.

Q. This question. (Reads:)

“Q. And you, if you worked the lay, were to get seventy-five per cent. You were to retain seventy-five per cent, is what I mean. If Wickersham was to get twenty-five per cent, you were to keep the other seventy-five per cent, were you not?

A. Well, there was five per cent of that to go to the quarter interest.

Q. How do you mean five per cent was to go to the quarter interest?

A. I let the lay—I made a deed to Mrs. Patterson of the quarter interest, and a seventy per cent lay to Mr. Hamilton. [99]

Q. And there was five per cent to be retained by you, wasn't there?

A. No. That was for the quarter interest.”

Did you so testify at that time? A. I did.

Q. And at that time you were, in addition to that amount, to receive a secret five per cent from George Smith?

A. A promise from Mr. Hamilton to that effect.

Q. Then your statement here was not correct, that there was only five per cent retained.

A. That five per cent was to go to the quarter interest.

Q. (Reading:)

(Testimony of H. J. Patterson.)

“Q. How did it go to the quarter interest?

A. Well, because that was the agreement.”

That question was asked and that answer given by you, was it not? A. I think it was.

Q. Was not this question asked of you, and this answer given? (Reads:)

Q. “And you sublet to Henry Hamilton for seventy per cent.

A. Yes.

Q. The other five per cent is to be paid to you, isn’t it?

A. It was, but I transferred that. That went to the quarter interest.”

Was that question asked of you and that answer given at that time?

A. I don’t remember. It may possibly have been.

Q. Would you say that it was not? A. No.

Q. Was not this question asked and answer given? (Reads:)

“Q. How does it go to the quarter interest? Did you convey it in that deed to your wife?

A. No. It was not exactly stipulated.

Q. It was not stipulated, as a matter of fact?

A. But that was the intention. [100]

Q. As a matter of fact, the five per cent, the difference between the seventy-five per cent and the seventy per cent, is to be paid by the present laymen on that ground to you, isn’t it?

A. I think that is the way the papers read.”

Were those questions asked you and those answers given by you at that time? A. Possibly. Yes.

(Testimony of H. J. Patterson.)

Q. Would you say that it was not? A. No.

Q. (Reading:)

“Q. Therefore, five per cent of the gross output under the lay upon the Daly Bench is payable to you? Isn’t that correct?

A. That is according to the way the papers reads.

Q. And five per cent of all money taken out by Mr. Hamilton under that lay should go to your estate to pay your debts, should it not?

A. No. To the quarter interest. That was to go to the quarter interest.”

Was that question asked and that answer given by you at that time? A. Possibly.

Q. Would you say it was not? A. No, sir.

Q. Is your memory on that subject better now than it was when you were being examined before the Referee in Bankruptcy to ascertain what property you had that was to go to your creditors?

A. I don’t know.

Q. Why didn’t you in this examination at this time, Mr. Patterson, disclose the fact that you had made a secret agreement with George Smith to get an extra five per cent?

A. Well, I haven’t any reason to give.

(Controversy between attorneys. No answer.)

[101]

Q. That is your answer, is it? You knew at that time that I, on behalf of the creditors, was seeking to locate the property that you had that should go to pay your debts, didn’t you? A. Yes.

(Testimony of H. J. Patterson.)

Q. You knew you were under oath at that time, didn't you? A. Yes, sir.

Q. You had been sworn to tell the truth, the whole truth, and nothing but the truth, hadn't you?

A. I had.

Q. You didn't disclose that extra five per cent when I asked you about the consideration that you were to get for that lay, did you, Mr. Patterson?

A. It was only a promise, and I didn't pay much attention to it.

Q. I was asking you what you received—what the consideration was for the transfer of that lease to Hamilton, and what royalty and what gold dust you were to receive wasn't I?

A. I don't remember that.

Q. You know, as a matter of fact, that I was, and that that was the only purpose that I had, was to find out what percentage of the output of that claim was to go to you. You knew that, didn't you?

A. Yes, sir.

Q. And you concealed that fact?

A. I didn't consider it amounted to anything.

Q. It didn't amount to anything. Five per cent only amounted to several thousand dollars, didn't it? [102]

Q. Was not this question asked and this answer given? (Reads:)

“Q. And the quarter interest in the claim gets itself six and a quarter per cent of the output, doesn't it? A. No.

Q. The owners of the Daly Bench are to get

(Testimony of H. J. Patterson.)

twenty-five per cent of the output, are they not?

Mr. HEILIG.—(To Mr. Clark.) That is not what you said.

A. No.

Mr. CLARK.—Q. Who is to get the twenty-five per cent?

A. Now, I don't know whether I could make it any better by explaining a little bit in the matter.

Q. I will ask some more questions. Who signed the lay to yourself? A. Wickersham.

Q. Who else, if anybody? A. No one.

Q. You were an owner in the ground, were you not, at the time that that lay was executed?

A. According to the papers, yes, sir."

Those questions were asked and answers given, were they not? A. I think they were.

Q. Were these questions asked and answers given? (Reads:)

"Q. And at the time that lay was made it provided that twenty-five per cent should go to James Wickersham? A. Yes.

Q. And seventy-five per cent should be retained by you as lessee? A. As a lessee and owner.

Q. Did it say "lessee and owner"? A. No.

Q. Well, then, afterwards James Wickersham transferred a quarter interest in that claim to you?

A. It was made at the same time with the lease. It is a part of the lease. That is—(interrupted).

Q. The lease was executed before the deed was made to you, was it not?

A. Well, yes. But the lease called for the trans-

(Testimony of H. J. Patterson.)

fer of the deed, as far as I can remember."

Those questions were asked, and answers given, were they not? A. I believe they were. [103]

Q. Were these questions asked you and these answers given? (Reads:)

"Q. You never have assigned to Mrs. Patterson the five per cent that you retained by virtue of being a lessee from James Wickersham, have you?

A. I included it in that deed.

Q. It is not included in the deed to your wife, is it?

A. That five per cent was supposed to represent the quarter interest."

Were those questions asked you and those answers given at that time? A. I believe they were.

Q. Was the five per cent secretly reserved to you from the George Smith lay supposed to be included in the transfer of the quarter interest to Mrs. Patterson? A. Repeat that.

Q. (Reading:)

"Q. You have never assigned to Mrs. Patterson the five per cent that you retained by virtue of being a lessee from James Wickersham, have you?

A. I included it in that deed.

Q. It is not included in the deed to your wife, is it?

A. That five per cent was supposed to represent the quarter interest."

I ask you now whether that secret five per cent was what you were referring to here, and whether that was to be transferred to your wife with the title to the property? A. No, sir.

(Testimony of H. J. Patterson.)

Q. Was this question asked you and answer given? (Reads:)

“Q. There is no assignment of this lease or your interest in this lease, to Mrs. Patterson?

A. No. Not of the lease.

Q. There has never been any assignment in any other way of any interest in this lease to Mrs. Patterson? A. No.

Were those questions asked and those answers given at that [104] time? A. Possibly.

Q. Would you say they were not? A. No.

Q. Were these questions asked and these answers given? (Reads:)

“Q. At the present time you are still the owner of five per cent, as far as the records go, of the gross output of gold extracted from the Daly Bench by Hamilton under the lease under which he is now operating? A. As far as those papers go.”

Those questions were asked and those answers given, were they not? A. Possibly.

Q. After this deed was made to Mrs. Patterson, I understood you to tell Mr. Heilig that you had no further interest in the royalty in any way and you considered all the royalties as going to Mrs. Patterson. You testified that way this morning, did you not?

Mr. HEILIG.—His royalty on the quarter interest.

Mr. CLARK.—No. I am asking about the royalties.

A. I meant the five per cent should go to the quar-

(Testimony of H. J. Patterson.)
ter interest as was always intended.

Q. You are not referring to this other five per cent, the secret five per cent which was coming from George Smith.

A. That was merely a promise. It was ground that there was nothing struck on, or anything of the kind. There was not anything in view, or any value; so to speak; and afterwards when the royalty was reduced by James Wickersham I gave up all claim or released them from their promise of any kind. [105] I had given up the secret reservation of five per cent that George Smith had made before any money was taken out or any money struck. I had not given it up on November 27, 1911, when I gave the deed to Mrs. Patterson. I wasn't figuring on anything of the kind; it was just a wildcat proposition and I didn't think anything of it. At the time I took the agreement I considered it as possibly amounting to something, and when I made the sub-lease to Hamilton on November 27 with the understanding that he would give George Smith a lay I considered it might possibly turn out something; and after the deed was made to Mrs. Patterson I was possibly interested in the royalty to be derived from the claim. Hamilton went in with the Smiths and they worked the ground. The ground had no known value on November 27, 1911; it possibly had a market value of \$10,000. The whole of the Daly Bench could have been sold for that sum before Hamilton did any work under that lease; I believe it had a market value of that much. It had a possible value

(Testimony of H. J. Patterson.)

at the time I gave a sublease to Hamilton; I recognized it as having a possible market value. I testified at the former trial that I thought it was possible that the Daly Bench could have been sold in the market for considerably over \$10,000 on the 27th of November, 1911. There was no consideration from Hamilton for my transfer of the lay to him except the promise. When I was expending that \$1,400 on the claim up until January I was helping Smith. I was expending money and I would likely have continued with it and would have received an interest, a share in the profits of that lay, and if I had been allowed to continue in it I would have made enough to have paid all of my creditors. [106]

Mr. CLARK.—Q. You had a written agreement with Mr. Hamilton whereby in this sublease you receive five per cent more than was necessary to pay Judge Wickersham, didn't you—the royalty that you say went to your wife.

A. I am getting confused now.

Q. I will make it clear. In your sublease to Mr. Hamilton he covenanted to pay Wickersham twenty-five per cent and you five per cent; and you say that five per cent went to your wife.

A. Yes, sir. [107]

Q. Now, didn't you attempt to use that for the purpose of getting a little credit, or use that as security to Mr. Bruning? A. That five per cent?

Q. Yes. To Mr. Bruning?

A. No. I made the deed that same day to Mrs. Patterson.

(Testimony of H. J. Patterson.)

Q. And did you make a proposition to Mr. Bruning whereby that five per cent was involved?

A. I remember a conversation with Mr. Bruning.

Q. Just state what that conversation was.

A. Something of the kind.

Q. What was it?

A. The possibility of giving him security.

Q. Of that five per cent?

A. On a quarter interest.

Q. That was for your personal indebtedness to Mr. Bruning. A. Yes, sir.

Q. Just state what the proposition was that you made to him at that time.

A. I don't remember, but it was regarding a possibility that I could do such a thing.

Q. When did that conversation take place?

A. I don't remember the exact date now. It was I think before—yes, I think there was a cleanup before—I think it was next to the last cleanup.

Q. Just state what that conversation was, Mr. Patterson.

Q. State that conversation, Mr. Patterson. [108]

A. I think the proposition came up over that check to Mr. Peoples.

Q. Yes? Go ahead and give the details.

A. And Bruning told me that Mr. Peoples was very mad about it, but he had told Mr. Peoples that he would have to wait until the next cleanup. And Mr. Bruning was very much worried, and I told him that possibly I might be able to give him security on that quarter interest; that I might possibly give him

(Testimony of H. J. Patterson.)

security on that quarter interest.

Q. Just to refresh your memory, Mr. Patterson, that conversation took place after the deed was made to Mrs. Patterson, didn't it?

A. I don't think so.

Q. You would not state that it didn't, would you?

A. Well, now, I wouldn't say.

Q. When, as a matter of fact?

A. The time was so close in there that I couldn't possibly place the date.

Q. Now, just to further refresh your memory, wasn't it something about a little security to Mr. Bruning for the money advanced by him, that he had advanced personally to help you?

A. Now, I don't remember that.

Q. Would you say that that was not the purpose for which you had approached Mr. Bruning?

A. No. I couldn't say that for sure.

Q. Wasn't the proposition this, Mr. Patterson, that after the deed had been made to your wife that you then had a conversation with Mr. Bruning relative to him taking over some other indebtedness and you indemnifying him by giving [109] an assignment of the five per cent that was coming out under the Hamilton lay? A. No, sir.

Q. Nothing of that kind?

A. No, sir. What I spoke to Mr. Bruning about was the quarter interest.

Q. Just the quarter interest? A. Yes, sir.

Q. But wasn't that after the deed was made to Mrs. Patterson? A. I don't think it was.

(Testimony of H. J. Patterson.)

Q. Don't you know, as a matter of fact, Mr. Patterson, that it was some little time after the deed was made to Mrs. Patterson?

A. No. I don't think so.

Q. Are you more certain than you were a few moments ago?

A. No. But I am trying to recall it as much as I can.

Q. You have the transaction pretty clear in your mind; that particular transaction?

A. I have a recollection of the transaction, something of the sort, but I can't remember it now.

Q. You have talked it over with your wife, haven't you? A. The transaction?

Q. That particular transaction.

A. I told her of the offer.

Q. Of the offer made by you?

A. To give Mr. Bruning security.

Q. That is, Mr. Bruning personally.

A. Yes. [110]

Q. And she will testify that she told you it was hers and that she didn't want you to do it?

A. No. She objected to it, refused to do it.

Q. That will be her testimony on that point, will it? A. Well, I don't know.

Q. You never have discussed the matter with her?

A. That is the way the thing occurred, as near as I can remember.

Q. To refresh your memory, Mr. Patterson, didn't that conversation take place before your petition was filed in bankruptcy, but a considerable time after

(Testimony of H. J. Patterson.)

you had closed down your works out on Engineer Creek?

A. I think that it occurred over that check of Mr. Peoples. That is my recollection.

Q. There was considerable controversy over that check after that deed was made to Mrs. Patterson, wasn't there? A. I don't—I can't recall it.

Q. Just to refresh your memory and fix it, did you not testify this morning that you didn't know that that thousand dollar check hadn't been paid, or that they hadn't paid it, until after the deed was made to Mrs. Patterson?

A. I don't remember to have testified that way.

Q. Was not the question asked of you this morning by Mr. Heilig as to whether or not you knew about that thousand dollar check being entirely rejected by the bank?

A. Oh, so far as its being entirely rejected, yes.

Q. That didn't happen until after you had made the deed to Mrs. Patterson of this interest, did it? [111] A. I didn't know that it hadn't.

Q. And, therefore, any controversy or any discussion about that check being finally rejected must have been after the deed was given to Mrs. Patterson.

A. The controversy I refer to is the time Mr. Bruning turned the check down, or told Mr. Peoples that he would have to pass it over to the next cleanup.

Q. But, Mr. Patterson, did you not testify this morning that at the time that you made the deed to Mrs. Patterson you didn't know that the bank was

(Testimony of H. J. Patterson.)

going to take that fifty-five hundred dollar cleanup that came in—(interrupted).

Mr. HEILIG.—That is the last cleanup?

Mr. CLARK.—Yes. —and that you supposed that they would pay the checks that you had issued before that? A. Yes.

Q. Therefore, that at the time you made the deed, you supposed that that thousand dollar check was going to be paid?

A. I supposed it was going to be paid out of that cleanup.

Q. Now, to refresh your memory, wasn't it after the bank had taken that fifty-five hundred dollars, and Peoples was making a considerable complaint about his thousand dollar check not being cashed, that this whole matter came up? A. No.

Q. Why was there any controversy before that when the bank had merely told Mr. Peoples to wait until the next cleanup?

A. It was the move that Mr. Peoples was making when that check was turned down that caused Mr. Bruning to seize that cleanup. [112]

Q. You were willing to give that quarter interest to protect the bank or to protect Mr. Bruning?

A. Mr. Bruning was a very good friend of mine and I would have done anything in the world to help him out that I could.

Q. And you were willing to pledge what you say now is your wife's interest to accomplish that.

A. With her consent.

Q. Where did that conversation take place?

(Testimony of H. J. Patterson.)

A. I don't know. I think it was somewhere in the bank. I can't hardly recall it.

Q. Did you consider that the bank was going to continue to pay all checks that were presented, regardless of whether there was any *finds* there to pay them or not, that is, from your Last Chance operations?

A. Well, I couldn't tell. I had no—(interrupted).

Q. Had you ever had any agreement with the bank whereby they were going to back you indefinitely?

A. No, sir, I had not. [113]. When I was making up the sublease with Hamilton I didn't put in the provision about the Smith boys going to have a lease on the property because Smith was not present. I didn't bind Hamilton to give him a lease, but when he took this lease he agreed to give the Smith boys a sublease. At that time I owed something like thirty or thirty-five thousand dollars. I did not have put in the lease that I was to get an extra five per cent from George Smith because the terms of the Smith lay were for sixty per cent in the first place and I expected to be a partner in the lease; I couldn't come through on the proposition and I told him, just a verbal proposition, a promise, that I would give him the five per cent if he would get some reliable man to back him. That is the same George Smith that is now in the penitentiary for grand larceny. Smith owed so much money that it was absolutely impossible for him to have it in his name. The way Wickersham put it to me was, he said, "Now, George has

(Testimony of H. J. Patterson.)

been dogged to death around here; I believe George, if he had a chance, would make good," and I told him that I didn't think that George would make good, but he just seemed to think that George Smith, if he had a chance, would make good. George Smith was really the man who sold Wickersham the claim, that is he made the [114] deal between Pat Daly and Wickersham; he asked me personally to give Smith a chance. He tied me up; he made me responsible for everything, yet forced me to give Smith the best of it.

Q. Now, in getting that lease from Wickersham, did you consult Mrs. Patterson about the terms of the lease, that is, that last lease, the one of November, 1911? A. I think we talked it over.

Q. It was dated October 12, 1911, but wasn't delivered until November? A. Yes.

Q. You talked it over beforehand?

A. In conversation. I don't remember now.

[115]

Q. Didn't you testify, in answer to a direct interrogatory by Mr. Heilig this morning, that you talked it over with your wife and she agreed to the terms of it? A. The terms of that lease?

Q. The terms of the lease with Wickersham.

A. I don't remember.

Q. Didn't you testify that she knew the terms of it and agreed to it before he signed up the lease?

Mr. HEILIG.—He didn't testify to that at all.

Mr. CLARK.—That is my remembrance and recollection of it.

(Testimony of H. J. Patterson.)

Q. What is the fact: Did you discuss it with her or not?

A. Why, I always talked over matters with her.

Q. Did you discuss that particular matter?

A. I couldn't state the exact conversation in particular, but I know that there was a very—we were very much displeased with the way the thing was forced out different from the last lease, and the burdens imposed on it, but, under the circumstances, why, she agreed to them having it or to take it.

Q. Did you ever tell her about the terms and conditions of that lease, how it bound that one-quarter interest for all the royalties and against all damages that Wickersham might suffer? A. I did.

Q. Did you tell her that Wickersham was to receive twenty-five per cent of the gross output of all gold that came out of the claim, out of her quarter interest as well as out of his three-quarters' interest? [116]

A. No, sir. I told her that Wickersham was to receive the twenty-five per cent out of the gross output.

Q. Did you show her the lease?

A. I don't know whether—I took the lease home to the house. I don't remember whether we read the lease over together or not, or how, or whether she read that, or whether I just simply explained some of the matters to her.

Q. When you were making that compromise agreement with Horner & Company, the Happy Home people, did you tell her about the terms and condi-

(Testimony of H. J. Patterson.)

tions of that compromise agreement? A. Yes, sir.

Q. Did she understand fully what was being done?

A. Yes, sir.

Q. She agreed to it?

A. Well, she didn't like to agree to it. She objected to it.

Q. Did she agree to it? A. Yes.

Q. Did you show it to her?

A. No. I didn't show it to her, but I told her the conditions; that we were to give them seventy-five feet. There were three or four propositions brought up in that controversy. One that they offered to take, to settle, for half of the claim, either take the lower half or the upper half. We refused to do that. They came back with another proposition; that they would take 150 feet off of the upper end, which we also rejected. And finally they agreed to take seventy-five feet, and, with the burden I was carrying and the way I was tied up to Mr. Wickersham, I asked her to consent to the settlement. She didn't think that they ought to have anything. [117]

The drill holes were sunk with my wife's money; she paid for them; she caused them to be sunk. In my testimony before the referee in bankruptcy on May 1, 1912, I possibly testified, when asked how I first acquired the interest in that property, that there was a previous agreement sometime in 1910, a written agreement on record and that under that agreement I was to sink a hole to bedrock [118] and that I caused it to be sunk.

I can't give the exact date when the Hosler note

(Testimony of H. J. Patterson.)

was paid by him and myself. I know it was after we settled up, after a settlement of his affairs and mine; probably in the summer or fall of 1910 I think the Ready Bullion Mining Company closed down in June or July, 1910; the payment was made some time after that, I don't know just when; it was before he went to Hot Springs. It was not immediately after the closing down of our works out there, I don't think I know that Hosler and I made a trip to the Beaver country and didn't get back here until just before the 4th of July; I can't give you the actual date. Possibly I testified before the referee in bankruptcy on May 1, 1912, that this money was received from Hosler immediately after the Ready Bullion Mining Company wound up their lay there; I think in the spring of 1910 or 1909; I wouldn't be positively sure.

After I came down here from the Dawson country I engaged in several mining ventures; I worked for wages first.

I don't know what was done with the note as soon as Hosler paid his part of it; we had the books and papers and everything there on the table. I saw the note at the time that settlement was made; it was at our house; I think it was on the table. Mrs. Patterson figured up the note, and the interest that it carried would be quite a large sum but owing to the old associations and the long time she agreed with Hosler that she would settle for the principal and \$100 interest, \$50 each; the note was there in his presence when we were in the settlement; whether he took the note away or not I don't know. At the last trial I tes-

(Testimony of H. J. Patterson.)

tified that the note was delivered to Hosler when he paid his share; that I didn't know why it was not marked paid; that we got up and went away and probably overlooked it; that he didn't take it with him; something of that kind.

The first mining venture that I went into after I came down from Dawson, on my own account was an option and lease on 4 below Esther creek; it was on the upper end of the Tolbert bench; I worked there about a week or ten days; I didn't make any money there. [119]

I was with my wife when she staked that ground in the Dawson country; I set up the stakes for her and she wrote on them; then she hired a surveyor to survey it; I think I paid him for that. Mrs. Patterson went and attended to the recording; I might possibly have furnished her the money; she wasn't in business for herself and she wasn't working for wages; the only money she had was furnished by me; excuse me, Mrs. Patterson had some little money herself but I don't know what. Possibly I gave her the money with which she paid for the crown grant giving her the right to the ground for a year; each year that crown grant had to be renewed upon the payment of additional sums of money; it was fifteen dollars I think for renewing the claim.

I heard of Horner making a big strike on the Happy Home claim; I remember the incident; I was working on Engineer at the time; I did not after that became public go into the boiler-house and remind John Junkin that I owned a quarter interest

(Testimony of H. J. Patterson.)

in the Daly Bench and say to him that the pay was sure to run through my bench from all indications and the way it was lined up; I never had any such conversation.

When I turned over the lay to the men on Last Chance in November, 1911, I considered that the money was there in the ground and if it was handled properly it would cover the indebtedness. I did not consider that it had any value or could have been sold for anything, what I had uncovered, to inexperienced people. On the former trial I testified that I assigned my lay on Last Chance Association; that I got no consideration for it; that it was pretty hard to estimate the value of that lay on the 27th; that I could not have sold it for anything, but if it had been properly worked I am satisfied it was equal to the debts, but I couldn't say that there was profit in that particular ground or not. But there were two blocks of ground untouched above included in that lay and which could have been opened up much easier than the piece of ground that I did open. After the receiver had been put in there I offered my services in every way possible to offer. I offered everybody every assistance that I could. [120]

On Redirect Examination.

I gave Hamilton the seventy per cent lay on the whole lease with a promise that he would give Smith a lease at 75% or at 65%, and if they made anything that he would give me five per cent, the difference between the two; that five per cent was the difference between the 70% and 65%; the 70%

(Testimony of H. J. Patterson.)

which Hamilton was to pay to Wickersham, or the 25%, and the 5% to the quarter interest. Under my arrangement with Hamilton he was to retain 70% for himself, and he promised to sublet 250 feet of a strip to the Smith Brothers and the balance of it he worked himself; he was to work the middle 300 feet and then he and I together were to work the lower half which would naturally be wet; we never worked the lower half; I did not work any ground with Hamilton. On the part that Hamilton worked, which he did not sublet to Smith, he was to pay 20% to Wickersham and 5% to Mrs. Patterson; that is after Wickersham had reduced his royalty from 25% to 20%; that is the arrangement under which Hamilton worked the lay except the 250 foot strip which he worked in partnership with the Smith brothers. Hamilton paid to Wickersham 20% and was to pay 5% of the gross output to the owner of the quarter interest, but under the injunction he had to pay it into court. In the 250 feet that he worked in co-operation with the Smith brothers he had one-third interest and they had two-thirds. For the working of that 250 foot strip they were to pay as royalty 20% to Wickersham and 5% to the quarter interest. The only further arrangement regarding royalty to be paid was Hamilton's promise to me of 5%, the difference between the Smith lease at 65% and the 70%. Under the arrangement the Smith Brothers & Hamilton were to pay 30%, and the other 5% *per cent* that I speak about was to go to me. When they sunk the shaft and

(Testimony of H. J. Patterson.)

run the tunnels and didn't find anything I relinquished any right to any five per cent and then the royalty paid by the Smith Brothers & Hamilton for the working of that 250 foot strip was 30%; no, I am wrong; when they had sunk the shaft and run the tunnels and didn't find any pay they asked me to go with them to Mr. Ray and to get them a reduction of the royalty. [121] They asked for a ten per cent reduction on this 250 feet from Henry Ray, but he wouldn't do that because he thought that the upper part would probably be the only place where there would be any pay on the ground, but he offered to reduce the royalty five per cent on the whole claim, and that reduced it to 25%. He reduced Wickersham's royalty to 20%, and I relinquished any claim I had under any understanding or promise, and that left the royalty to be paid by the Smith Brothers & Hamilton 25%. I never got anything for this five per cent that was promised me under the arrangement with the Smith Brothers; I had relinquished my claim to that five per cent long before anything ever came out of the ground. This money which was paid into court by Hamilton, that five per cent royalty paid by him into court, by Hamilton, belonged to the quarter interest.

The \$1400 that I expended in helping the Smith Brothers was under the promise of a lease; it was under that paper referred to in the lease; it commenced under that and it was financing and helping Smith to sink the shaft and put up buildings and running a tunnel. It was money of the Last Chance.

(Testimony of H. J. Patterson.)

I drew checks on the bank here; they were paid in checks on the American bank when I was working on Engineer; I gave checks for these amounts and they were cashed by the bank. I don't know for sure whether the bank was aware that I was making those payments. This \$1400 was expended in sinking the shaft and clearing ground around there and putting up buildings. When I was closed down I told George Smith that they could get somebody to finance the proposition for them; I would give him five per cent more but they must take over the dead work that had been done; it figured up something like \$1400. When I came in I told Bruning that George had promised to pay that and that is why he segregated the Eva creek account. I think I gave a separate note for it.

I don't know how you would estimate the market value of the ground. Of course if you are going to estimate real value you would want to test the ground to be able to figure it.

At the time I signed this deed to my wife nothing had been found on the ground of value. [122]

The market value of a placer claim is a very hard thing to explain. If the ground was opened up so that you could get an opportunity to test it and get an idea of the real value, then it would be something, and the market value is generally based on reality. But in placer mining it may be valued at \$10,000 to-day and absolutely nothing to-morrow. It depends on the hole when it gets to bedrock. We had no holes, that is, there were two drill holes *in* believe

(Testimony of H. J. Patterson.)

at the time, but I didn't know the value of either of those two drill holes. When I testified it had a market value of \$10,000 I meant that the adjoining property possibly gave it a possible value, that is, people would be willing to take a gambling chance on a claim that has absolutely no holes to bedrock. If a man had taken an option on the ground for \$10,000, after the shaft was put down and the tunnels run he would have walked off and left it; yet there was \$30,000 or more profit out of the lay.

Testimony of Fred W. Craig, for Defendants.

Thereupon FRED CRAIG, as a witness for defendants, testified:

In the summer and fall of 1910 my business was prospecting and drilling holes with a Keystone drill on placer ground. I received this check now handed me, marked Defendants' Exhibit 4 on the Washington-Alaska Bank for \$225 to my order, dated September 21, 1910, signed by Mariam A. Patterson; that check was paid. The service we performed for which that check was given was drilling two holes that many feet at a dollar a foot, on the Daly Bench on Eva creek; my map shows that the first hole was 103 feet deep and the second hole was 122 or 23 feet; I made my charge for the work \$225. We never knew for sure whether the first hole that we sunk was to bedrock or not; there was a controversy at the time; we were down—we couldn't put the drill in the hole again so Mr. Patterson told us to sink another one. There was 25 or 30 feet of thawed muck above bedrock; the muck is very solid; if you

(Testimony of Fred W. Craig.)

drill very quick you can get down to bedrock, but it keeps squashing in gradually and after half an hour you dare not put the drill down any more. As I remember it it was because of the doubt that the first hole was to bedrock that we sunk a second hole; the second hole went to bedrock [123] we proved that was bedrock.

On Cross-examination.

As I understood it at the time the reason that I remember sinking the second hole was to see whether or not there was gold on bedrock, and I suggested where the second hole would be myself, and fixed the place for that second hole in the place that I considered likely to have a paystreak if there was one there.

Testimony of Henry T. Ray, for Defendants.

Thereupon HENRY T. RAY, as a witness for defendants, testified:

I have been for many years a resident of Fairbanks; since 1910 or 1911 I have been Judge Wickersham's representative and attorney in fact with reference to the mining claim known as the Daly Bench on Esther creek, during his absence. I knew he had executed a lease to Harry Patterson on the Daly Bench. I executed the sheet consisting of six lines of typewriting attached to Plaintiff's Exhibit "B," the lease dated October 12, 1911, from Wickersham to Patterson. Mr. Patterson, the Smith boys and Mr. Hamilton came to town and stated that they were going to throw up the lease unless I gave them

(Testimony of Henry T. Ray.)

ten per cent more than the lease called for. The lease called for 75% and they wanted 80%; they had done a lot of work and found no pay and they were going to throw up the lease unless I gave them 10% increase, and after talking it over with them, I made them a counter proposition to give them 5%. This 10% was to apply on the upper 250 feet of the ground; I made them a counter proposition to give them 5% on the whole claim as covered by the original lease; after considering it they accepted the proposition; they were to go on 30 days more; they stated that they would do 30 days more work and if they didn't find anything by that time they were going to quit the ground; that is the reason I increased the percentage.

I collected as royalty from Henry Hamilton and the Smith Brothers 20% of the gross output. I wrote the words, "I hereby consent to the subletting of the mining ground described in the lease referred to. James Wickersham, by Henry T. Ray, attorney in fact," [124] written at the bottom of the instrument now shown me, Plaintiff's Exhibit "E," purporting to be a lease dated November 27, 1911, by H. J. Patterson to H. C. Hamilton, and purporting also to incorporate an assignment of the Wickersham lease. What I wrote refers to the original lease that is mentioned in the document from Wickersham to Patterson; the addendum there is in my own handwriting. I subsequently attended cleanups that were made upon that piece of ground while the Smith Brothers and Hamilton were operating there;

(Testimony of Henry T. Ray.)

I collected 20% royalty for Wickersham; at the first cleanup held by them there were present the Smith boys, Hamilton, Mrs. Patterson, Harry Patterson and myself. I think while I was present I heard Mrs. Patterson make a demand for royalty accruing to her by reason of her ownership of a quarter interest in the ground, but I am not clear about it. I got my royalty first, my 20%, the balance of the dust I was not particularly interested in. But Mrs. Patterson, if I recollect right, she said she was there and she wanted her royalty. I didn't know what royalty she had reference to particularly. Mrs. Patterson was there on a number of occasions. During the time that active operations were carried on there Wickersham was absent most of the time. I, as his representative did not at any time make any objection to Hamilton or the Smith brothers or both carrying on mining operations on that ground.

I have lived continuously in the Fairbanks mining district since September, 1904; during that time I was deputy recorder for a little over four years; after that I followed conveyancing and notary work; I have done considerable conveyancing of mining claims situate in Fairbanks precinct.

Testimony of Mariam A. Patterson, in Her Own Behalf.

Thereupon MARIAM A. PATTERSON, one of the defendants, testified:

I was married to H. J. Patterson on June 3, 1896; came to Yukon Territory in 1901; remained there five years; I was there during the year 1905; in 1906

(Testimony of Mariam A. Patterson.)

I went outside for about three years and then came to Fairbanks where my husband was then; while in the Yukon Territory I lived with my husband at various places, mostly on Bonanza creek. (Check marked Defendants' Exhibit 4 handed witness.) [125] I signed this check on the Washington-Alaska bank dated September 21, 1910, made to the order of Fred Craig for \$225. It was my money that paid that check. I got it from the payment of a note that Mr. Patterson and Mr. Hosler had given me in the Dawson country for money loaned to them. (Defendants' Exhibit 1 handed witness.) That is the note I have just referred to. The money I received for it was put in the Washington-Alaska bank to my credit. I received a pass-book for the deposit that was made to my credit. (Defendants' Exhibit 3 handed witness.) That is the pass-book that I received from the Washington-Alaska bank for the deposit made for me. That note was given for money loaned to Mr. Patterson and Mr. Hosler for mining operations on Eldorado or Bonanza creek. We were on Bonanza creek at the time the note was given and when I loaned the money; that is in the Yukon Territory. I staked a fractional placer mining claim between 45 and 46 below on Bonanza and this money that I loaned to Mr. Hosler and Mr. Patterson was from the royalty out of that claim, that fraction; Mr. Hosler and Mr. Patterson paid me royalty. The royalty that I received during the year 1905 was something over \$2,000; royalty that was paid by Mr. Hosler. I deposited the gold-dust that I received in

(Testimony of Mariam A. Patterson.)

the Bank of British North America. I received my royalties in dust. I received a pass-book issued by that bank to me. (Defendants' Exhibit 2 handed witness.) That is the pass-book which was issued to me by that bank. This shows that from September 2, 1905, to October 2, 1905, I deposited gold-dust to the amount of \$1,943; that I received from Mr. Hosler; that is not the total amount of gold-dust that I received. It was of this money that I received and deposited to my credit that I loaned the \$500 to Mr. Patterson and Mr. Hosler and took this note for it.

The pass-book Defendants' Exhibit 3 shows a deposit of \$300 on August 11, 1910, and one of \$475.98 on August 15, 1910; that money that was deposited to my credit was the money that Mr. Hosler and Mr. Patterson paid me on the note; the reason Mr. Hosler's amount is more than Mr. Patterson's is Mr. Hosler had at the time of sickness in his family borrowed various amounts from me, small amounts, and I had also done a little shopping for Mrs. Hosler, and in the settlement [126] these bills were all brought in. The check that I gave Fred Craig was for sinking the drill holes on the Daly bench. I came to pay for sinking those drill holes in this way. Mr. Patterson said he believed he would go to town and see if he could get a half interest in the Daly bench from Judge Wickersham for sinking some holes or doing some assessment work on the Daly bench; Judge Wickersham did not consent to give him a half interest but told him he would give him a quarter interest and a 75% lay; then as he had only a very

(Testimony of Mariam A. Patterson.)

little money himself and he wanted to use that for working purposes, for mining purposes, he told me that if I would pay for the sinking of the holes, do the work necessary to acquire the quarter interest, that he would give it to me, give me the quarter interest; so I consented. At that time he thought this work would cost \$250 or \$300, because he thought it was wet ground and I was willing to take the chances and told my husband so. Then he made the arrangements with the drill men to go to work up there; I didn't go up there, I didn't see the holes; I only know what drilling they did from what Mr. Patterson told me. After they sunk the first hole they were not sure that that had reached bedrock, so Mr. Patterson talked it over with me and I consented to pay for the sinking of another one. We thought the quarter interest, if there was anything in it at all, would be cheap at that. Those drill holes were sunk just a few days before the date of the check September 21, 1910; around the 18th or 19th I should judge; I can't be positive about that. After I had paid for doing this work I asked Mr. Patterson that when he got the deed, or went to Judge Wickersham to get the deed, to be sure and have it made out to me in my name. He said, "All right," but he didn't get the deed then because Judge Wickersham went out. Later when he got the deed I asked him to be sure and have it made out in my name. After he got to town he 'phoned that the judge wasn't willing to make the deed in my name; he was perfectly willing to give him a deed to the quarter interest, but since he had

(Testimony of Mariam A. Patterson.)

had all of his dealings with Mr. Patterson he preferred to continue to have his dealings with him. After I found that Mr. Patterson had received the deed from Judge [127] Wickersham I was very much disappointed and I asked him to have it transferred to me. Every time he went to town I would ask him if he had that deed made out to me, but I think he had only been to town once after that before he did deed it to me; he was so busy at the time and had so many things to think of that I presume it slipped his mind. When he did make the deed to me, after he signed it, it was left here to be put on record, with Guy Erwin; afterwards Mr. Patterson delivered the deed to me, soon after he got it back, probably a week, I don't remember just exactly the number of days. I didn't pay anything for the deed when I got it from Mr. Patterson; I didn't buy the property from him; I regarded myself as entitled to have the deed to the quarter interest in the Daly bench because I had fulfilled my part of our contract in paying for the work necessary to acquire the quarter interest; I always considered it mine, looked upon it as mine and spoke of it as mine. Judge Wickersham never objected to my being the owner of the quarter interest after he knew that the deed to the quarter interest had been made to me. He never stated to me that Mr. Patterson was forbidden from conveying that quarter interest to me.

Q. This lease that Mr. Wickersham subsequently made to Mr. Patterson, that is, the second lease, did you see that document before it was executed?

(Testimony of Mariam A. Patterson.)

A. No.

Q. Did you know the contents of it?

A. No. Not until afterwards.

Q. This lease which Mr. Patterson made to Mr. Hamilton—did you see that at the time it was executed? A. No, sir.

Q. Were you informed of what provision was made in that lease for the royalty that was to accrue to this quarter interest that you owned?

A. Only that Mr. Patterson told me that he had reserved five per cent for the quarter interest.

Q. Did you assent to that? A. Yes. [128]

Afterwards I made a demand upon Mr. Hamilton while he was operating under that lease for my royalty. I was present at the first cleanup and after he had weighed out Judge Wickersham's royalty and I saw that he was preparing to pour all the rest into a poke I said, "Mr. Hamilton, where is my share?" and then he told me that an injunction had been served and he had been instructed not to pay it to me but to pay it into court until the question of the ownership was decided. Mrs. Hamilton was present at the time. I am not sure, but I think I was at all of the cleanups and helped clean some of the dust; Mr. Patterson was in attendance at the same time. Mr. Patterson made no demand at any of those cleanups for [129] royalty from Mr. Hamilton or from the Smith Brothers for himself that I know of.

At the time that I received this deed from Mr. Patterson it was certainly not my intention in accepting that deed to hinder, delay or defraud any credi-

(Testimony of Mariam A. Patterson.)

tors of Mr. Patterson. I accepted that deed because I thought I was entitled to it; I was entitled to it because I had paid out my money for the work necessary to acquire it; from the time I gave Mr. Craig the check I considered that I was the owner of the quarter interest. I am sure it was not Mr. Patterson's intention at the time he gave me this deed to hinder, delay or defraud any of his creditors. I never heard Mr. Patterson state to any other person that he was the owner of this quarter interest in the Daly bench; I don't remember of ever hearing him claim the quarter interest in my presence. I certainly did not hear him say to John Junkin and a person by the name of Mosier shortly after they quit operations on the Tolbert bench that the quarter interest in the Daly bench belonged to him, or I would have corrected it; I would have said that it belonged to me. They may have had that meeting in my cabin but if they did I didn't pay any attention to what was being said. I don't remember of saying at any time to any person that my husband was the owner of this quarter interest in the Daly bench; if I had done so I would be pretty likely to remember it. I always spoke of that quarter interest as mine and generally referred to me and my partner Judge Wickersham. I told those persons that this quarter interest belonged to me but I can't recall the name or names of any person that I told; I think I know but I won't be sure. [130]

(Testimony of Mariam A. Patterson.)

Cross-examination.

(By Mr. CLARK.)

Q. You say you always spoke of the property as your property, did you, Mrs. Patterson? A. I did.

Q. Can you remember who you spoke to and called it your property?

A. No. As I said before, I can't remember the exact person.

Q. And you have no recollection of any person?

A. I think I know. But then there is no use saying who it is when I am not positive.

Q. And you are certain that you always spoke of it as your property? A. Yes.

Q. And "Me and my partner Judge Wickersham."

A. Yes.

Q. And you don't think that you ever spoke of it in any other way after the hole had been put down and you would be entitled to a deed, as you contend?

A. I don't think so. I might have said "our" or "we," as married people have a habit of doing that.

Q. You were called to testify in the case of E. R. Peoples vs. Mariam A. Patterson and H. J. Patterson, a suit pending in this court, numbered 1748. Your deposition was taken before Mr. E. T. Wolcott on March 16, 1912, you being represented by your attorney Mr. A. R. Heilig. Do you remember the time your deposition was taken? A. Yes, sir.

Q. Do you remember of these questions being asked you and these answers given. (Reads:)

"Q. Did you not, during this last summer and fall prior to the time Mr. Patterson quit work on [131]

(Testimony of Mariam A. Patterson.)

Engineer Creek, in speaking of that property to various of your friends speak of it as Harry's ground? A. No.

Q. You are certain of that?

A. Harry had the lay and I owned the ground.

Q. Didn't you, during the time I have mentioned, and prior to the 27th of November, 1911, continually, in talking with some of your friends, speak of that ground as the ground that Harry owned on Ester Creek?

A. No. I always said 'we,' 'our ground on Ester.'

Q. You didn't speak of it as your ground?

A. Because he had the lay and I had the interest, so I said 'we.'

Is that what you meant to-day when you said you always spoke of it as "My ground," and "Me and my partner, Judge Wickersham"?

A. Well, I admitted that I may have said "our" and "we." I can't remember. It is so long ago.

Q. That was during the spring and summer of 1911 that you spoke of the ground, wasn't it? A. 1911?

Q. Yes. The holes were sunk in 1910, and that was during that winter and the next spring, was it, that you spoke of it? A. I presume so.

Q. In here you say you spoke of it as "we" because he had the lay and you had the ground. That was correct, was it? A. Yes.

Q. After those drill holes were sunk, Mr. Patterson didn't do any work on the ground in the way of carrying out the provisions of his lease, did he?

A. I believe not.

(Testimony of Mariam A. Patterson.)

Q. You knew he was supposed to file the proof of annual labor after the drill holes were sunk, didn't you? A. I didn't think much about it. [132]

Q. You know he never did any work on the ground under that lay? A. I don't think he did.

Q. And you knew he abandoned the lay, had never done a particle of work under it? A. Yes.

Q. You knew, under the terms of the lay he was supposed to commence work within a reasonable time and work continuously under the lay?

A. I believe that is what it says.

Q. And you knew he was not working under that lay. A. Yes.

Q. Then how did Mr. Patterson, several months after, during the spring and summer of the next year—how did he have any lay on the ground, Mrs. Patterson, so that you could speak of it as "our ground," because Harry had a lay on the ground and you owned the ground?

A. I don't know much about those things, Mr. Clark. I just supposed the lay was still in existence until the second was made out. I don't know.

Q. You knew that Mr. Patterson never intended to do any work under it—(interrupted).

A. No.

Q. After the two holes were put down.

A. No. I didn't know what his intentions were, Mr. Clark.

Q. When that sub-lay was made to Henry Hamilton, was your consent asked at that time in regard to transferring that lay? A. No. Well, I don't—

(Testimony of Mariam A. Patterson.)

Q. You stated a while ago that you discussed the sub-lay. [133]

A. Yes. We did talk it over.

Q. And that you consented to it.

A. Yes. I presume I did say when my deposition was taken at the time you referred to that I did not have anything to do with the gold produced after the lease was assigned over to Mr. Hamilton and that my consent was not asked at the time of the assignment to the lay to him.

I repeatedly demanded that Mr. Patterson make out a deed to me from the very beginning. I presume I did say when my deposition was taken that I did not at any time between the time that written agreement was entered into between Judge Wickersham and Mr. Patterson ask Mr. Patterson for a deed to the property, of his interest in the Daly bench; Judge Wickersham went right out that night or the next morning after he gave the lease. At the same time I testified that I did not ask him to execute that deed to me on the 27th of November, that I didn't remember when he first told me that he had executed the deed, but I suppose when he came home as soon as it was done, that he didn't tell me why he had executed it. I also testified then that from the year 1910 at the time the assessment work was done on this ground up until the time the deed was made. [134] I could not tell the name of any person to whom I had said that I had an interest in that property, that I didn't remember who it was that I told, that it was several of my neighbors there at Esther, I told them

(Testimony of Mariam A. Patterson.)

that I owned the interest; that during the Summer and Fall of 1911 I was living part of the time on Engineer creek; that I moved from Esther the last day of February, 1911.

At the time Mr. Patterson gave this deed to me on the 27th of November, 1911, he had been working on Engineer creek for some considerable period, I don't know just how long. Necessarily I knew that he was owing a great deal of money from those mining operations. I didn't know much about his troubles with his creditors. He told me that Mr. Peoples wanted him to pay more and more every week; and I knew that the bank had taken the last cleanup and refused to let him draw any checks against it, Mr. Patterson told me that. I didn't know anything about the thousand dollar check until a good while after; I couldn't say how long after this deed was made to me that I first learned or heard about that check, it is too long ago for me to remember. I have a faint recollection, nothing definite, of Mr. Patterson speaking to me about giving security on that quarter interest to secure Mr. Bruning or Mr. Peoples on account of that check being turned down, but I couldn't say whether that was or was not the time when I learned about this thousand dollar check I knew of the occurrence sometime.

I don't remember whether Mr. Patterson informed me at the time when I first spoke about doing the assessment work out there how much he was to do to acquire the interest in the ground; he told me if I would pay for the work I could have the quarter in-

(Testimony of Mariam A. Patterson.)

terest. We thought that it would cost between \$250 and \$300. In my examination before Mr. Wolcott above referred to I testified that I purchased the property from Judge Wickersham in 1910 by paying for the representation work; that that was the consideration of the acquiring of that quarter interest in that property, the sole consideration. I don't know whether Judge Wickersham knew right at the time the work was being done that I was going to pay for it, but he knew [135] after that that I had paid for it; he knew it when Mr. Patterson went to him to get the deed. I never talked to Judge Wickersham personally about the matter; I never asked him for a deed to the property.

About the time that Mr. Patterson gave me this deed I knew that he assigned his lay on Last Chance claim over to a lot of workmen that were out there, and that a suit had been instituted and a receiver appointed.

Q. You stated a moment ago, in answer to a direct interrogatory by Mr. Heilig, that Mr. Patterson told you about the sublease to Mr. Hamilton, and that he had reserved five per cent of the gross output to the one-quarter interest, and that you assented to that. That is correct, is it?

A. As near as I can remember. Yes.

Q. You knew that Mr. Patterson was having trouble with his various creditors at the time this deed was executed, didn't you?

A. Why, in a general way I knew something about his business, but he never was much of a hand to talk

(Testimony of Mariam A. Patterson.)

about his business to me, and I really didn't know very much about it, Mr. Clark.

Q. Did you know anything about a compromise agreement that was effected out there with the Happy Home people? A. Yes, sir.

Q. Did you know the details of that at the time?

A. No, I didn't know just what the details were, except as Mr. Patterson had told me.

Q. Did he tell you at that time?

A. Of the various offers that were made.

Q. Did he tell you at that time what the final agreement was?

A. Yes. I knew what the final agreement was.

Q. When did you first learn what that final agreement was?

A. I don't know. I can't remember that. I can't remember dates.

Q. Did you know, at the time the compromise was effected, [136] what was done?

A. I knew what the last proposition was; that they would take seventy-five feet of the claim. And George Smith called up on the phone for Mr. Patterson, and Mr. Patterson was not at the house, and I was talking with him, and he told me what the last proposition was, and I said, "Well, I am not in favor of giving them any, because I think they are just bluffing." Of course, Mr. Patterson and Judge Wickersham thought, to avoid trouble, they would rather give up that much.

Q. Were these questions asked of you and these

(Testimony of Mariam A. Patterson.)

answers given in your former examination?

(Reads:—)

“Q. A deed was executed by the people with whom you were in controversy to Mr. Wickersham, Mr. Patterson and others, wasn’t there?

A. Beg pardon?

Q. A deed was executed by Wagner, Wheeler and his partners to Mr. Patterson and Judge Wickersham, was there not?

A. I don’t know.”

Q. Were those questions asked of you and those answers given by you at that time when your deposition was taken?

A. I presume they were, as I didn’t know of my own personal knowledge, only from hearsay.

On Redirect Examination.

From the time that I paid the purchase price for this quarter interest I regarded myself as the owner of the property, yet I permitted my husband to sign his name to instruments offered in evidence here in which it is stated that he is the owner of the property because Mr. Patterson had always attended to my business affairs, of course, he always consulted me and advised me and then he went ahead and attended to them himself. I don’t think I ever saw what they call the compromise agreement just shown me by Mr. Clark; I knew the basis upon which the compromise was made. I at first [137] objected to that, but finally agreed, to settle the difficulty. I did not see the compromise agreement nor the deed from Wickersham to Mr. Patterson nor the lease from

(Testimony of Mariam A. Patterson.)

Wickersham to Mr. Patterson before they were recorded. I presume I saw them after they were recorded but I didn't pay much attention to them; I may not even have read them over. After I had paid the purchase price for this quarter interest my husband never at any time contended with me that the quarter interest belonged to him instead of to me.

Testimony of D. G. Hosler, for Defendant.

D. G. HOSLER, a witness for defendants, testified:

The D in my name stands for Delbert; I have been rather intimately acquainted with H. J. Patterson and Mariam A. Patterson, his wife, for a number of years. They frequently addressed me as "Del." I became acquainted with Mr. Patterson in 1901 on Chechaco Hill on Bonanza in the Yukon Territory. We went into partnership on a lay there; that partnership in the Yukon Territory continued until they came to Fairbanks district; I can tell when that was by the note I gave to Mrs. Patterson on Eldorado, that Patterson and I gave her. (Paper shown witness.) That is the note that Mr. Patterson and I gave Mrs. Patterson; that is my signature appearing on the paper, and that is Mr. Patterson's signature appearing on the paper. (Note marked Defendants' Exhibit 1.) On October 19, 1905, I was partner with Mr. Patterson; we mined on Eldorado, and lived close together, probably 300 yards. Mr. Patterson and I gave that note to Mrs. Patterson for money; we needed the money and we borrowed it from her and gave her the note, borrowed five hundred dollars, the amount that the note shows. I worked a fraction

(Testimony of D. G. Hosler.)

that she owned on Bonanza, between 45 and 46, Mr. Patterson was partner with me. I turned the royalty over to Mrs. Patterson; it was her ground; that claim was staked in Mrs. Patterson's name, her name was on the stakes. I didn't see her stake the ground; the papers were made out for the lay in the name of Mrs. Patterson. I saw surveyor Green working there, putting up the stakes and I think he was surveying this ground. I don't remember definitely the royalty that I paid but I think it was 70% that we received and she received 30%; I paid her the royalty in the customary way; [138] She was usually present at each cleanup and received her royalty just as we weighed the dust; she took her royalty at that time. I can state only approximately the amount of royalty I paid her during that summer; the smallest sum I can be positive of would be \$1,800, and I should say the largest sum would be \$2,500; it is between those sums. I am positive it was \$1,800 or over that I paid her in royalty; this royalty was paid to her before the giving of that note. The note was subsequently paid on Esther creek in the Fairbanks precinct; I subsequently came there in 1909. Mr. Patterson and I were interested in the Ready Bullion Mining Company on Ready Bullion, a tributary of Esther, in operations there; those operations were profitable; I should think Mr. Patterson's profits there were between \$3,000 and \$4,000, but that might be quite a ways off, it might be off a thousand dollars either way. I should say he made a profit of between \$3,000 and \$5,000. I was intimately acquainted with

(Testimony of D. G. Hosler.)

them while I was working on Esther creek. I understood that he paid his debts from that and was clear. I don't know anything positively about Mrs. Patterson's being the real owner of a quarter interest in the Daly bench but I had an impression that was created by my intercourse with Mr. and Mrs. Patterson, a very strong impression, that she had drilled this ground, paid for the drilling of this ground to receive her quarter interest and supposed that she had received her quarter interest directly afterward. I think I went down to Hot Springs in the latter part of September 1910.

Cross-examination.

(By Mr. CLARK.)

Q. You say you went down to Hot Springs in the fall of 1910.

A. I said I thought it was that time. I think it was in 1910.

Q. What month?

A. September. That is, I went down to stay at that time. Before that time I had been down I think it was in August to look over the camp.

Q. You have been down there permanently since that time. A. Yes, sir.

Q. Don't you know, Mr. Hosler, that the original contract between Mr. Patterson and Mr. Wickersham relative to [139] acquiring an interest in that ground wasn't signed up until the 21st day of September, 1910?

A. No, sir. I don't know anything about that.

Q. Then, if you left in September, 1910, and the

(Testimony of D. G. Hosler.)

work wasn't done until after that time, you were not here at any time after that work was done?

A. I think the work was done. I was under the strong impression that the work was done before the latter part of September, 1910.

Q. You are not certain of that?

A. No, I am not certain of that, but I don't—
(interrupted).

Q. What date did you leave here in September?

A. I can't state that. I could find it out.

Q. Can you tell us about what date?

A. It was the latter part of September.

Q. By "the latter part" what do you mean?

A. From the 20th to the 30th. I think it was between the 20th and the 30th. I didn't have that note in my possession for any length of time since it was originally signed by me; I might have had it in my hands, if I did it was at the time I paid it. I don't know whether I had it in my possession at that time or not; I saw the note at that time, I remember that distinctly but I couldn't say that I had it in my hand. I couldn't tell you how much I paid although I think I paid half of the note. If you would let me I would tell you how that settlement took place. [140]

On Redirect Examination.

I had gotten the impression that Mrs. Patterson had acquired that quarter interest before I went down to Hot Springs; at the time I got this impression formed the drill holes had been drilled and I understood she had a quarter interest, but as far as

(Testimony of D. G. Hosler.)

dates are concerned that far back, I am not very good on dates.

On Recross-examination.

I don't remember Mr. Patterson paying his part of that note. I couldn't say whether he and I paid this note at the same time. I paid my part in a settlement, I think it was in cash. I owed Mrs. Patterson a few dollars, which I can't remember the amount, but I know there was some money I had borrowed from her that I owed her besides this note, but I don't remember the amount, and I can't remember whether I paid her in check or in currency, but I think I paid her in currency because if I hadn't I would have noticed on my bank stubs. The money to Mrs. Patterson was turned over to her; this settlement took place at their residence at Esther city. I think that the note was present but I don't think that I asked for it; in fact I know then one was present, but I don't know whether I asked for it or not, I don't hardly think I did. I think Mrs. Patterson produced the note. I couldn't say that I had it in my hand; I remember seeing the note. I paid Mrs. Patterson my share of the note and some other amount that I owed her, cash that I had borrowed from her before.

Testimony of John Junkin, for Plaintiff (in Rebuttal).

Thereupon JOHN JUNKIN, a witness for plaintiff, in rebuttal, testified:

Shortly after New Years day 1911, at the Golden Gate hotel I had a conversation with Harry Patterson in which I asked him if he had gone to work on his

(Testimony of John Junkin.)

Eva creek property and he said, "No, not yet; I am investigating some property on Engineer and if the deal does not go through I will try my Eva creek property."

On Last Chance Association claim on Engineer creek in the early part of the summer of 1911 at a time when the report of the Horner strike on the Happy Home had been made public I had a conversation with H. J. Patterson in the boiler-house *I* which he told [141] me reminded me that he owned a quarter interest in the Daly bench and said that the pay was sure to run through the bench from all indications and from the way it was lined up.

After Mr. Patterson had closed down his operations on the Last Chance Association claim and Mr. McDonald had been appointed as trustee to work the ground, I had the following conversation with Mr. McDonald and Mr. Patterson—Mr. McDonald said, "I tried to get Harry to go to work as foreman underground but he wouldn't," and I then turned to Harry and asked him why he didn't help the boys out, to which Harry said, "I am done with it, and never want to see the Last Chance again."

Testimony of A. Bruning, for Plaintiff (in Rebuttal).

Thereupon A. BRUNING, a witness for plaintiff, in rebuttal, testified:

With regard to Mr. Patterson's testimony that Mr. Erchinger and I were instrumental in getting him to take over the Last Chance lay my recollection of the matter is this; that Mr. Erchinger thought that Mr. Patterson after his experience on Ready Bullion

(Testimony of A. Bruning.)

working in wet ground probably would be a good man to get to work on Engineer creek and I told him if they could get a good man as far as I knew of the ground if a man knew how to handle the ground he could make some money. My recollection is that Erchinger brought Mr. Patterson to me and asked me to use my influence, or if there was any chance for him to get the lay to get the lay for him.

Originally Mr. Patterson thought that it wouldn't take more than \$1,000 until he got the hole down to bedrock and as soon as he got this hole down he figured that the tunnel dirt would pay the operating expenses from that on. I did not agree to advance him any definite sum of money; that advancement was made by myself personally because I felt that owing to the debt he owed the bank, the original note, that as an officer of the bank I had no right to give him any more advances. From my dealings with him the previous year while he was in partnership with Tolbert I thought I was perfectly justified in taking a chance, and did, to back him or advance him the money until he was able to handle it himself. I don't know exactly the total amount he had used before he got through drawing on me [142] but I think he gave me a note for \$2,900. If that was actual cash advanced or cash advanced with the interest I have no recollection. The bank had made no agreement with him that they would cash all checks that were presented regardless of whether there was any money in the bank to cover. Regarding his testimony that it put him out very much because he said the bank

(Testimony of A. Bruning.)

seized the last \$5,500 cleanup that came in, there was no agreement with regard to the payment of checks until that cleanup came in or anything of that kind. At the time he was pretty heavily overdrawn and I wasn't going to cash any more checks until the cleanup got in. I cashed only a ten dollar check that day the cleanup came in. The bank had no agreement with him to supply him with an indefinite amount.

Testimony closed.

The foregoing, from page 1 to page 97, includes in narrative and condensed form all the testimony, evidence and exhibits given, offered, admitted and used upon the trial of the above-entitled cause in support of and against the allegations and denials of the complaint, answers and replies relative to the claim of plaintiff and defendants respectively to the fund of \$5,174.66 in the registry of the court, said claim being the only matter presented by this appeal.

That after the plaintiff and defendants had rested, the said cause was argued by the respective attorneys and the same submitted to the Court for consideration and decision, and thereafter, and before the findings of fact and conclusions of law had been made and signed by the Court and filed with the clerk thereof, said defendants requested the Court to make the following Findings of Fact and conclusions of law, to wit: [143]

[Title of Court and Cause.]

Defendants' Requests for Findings of Fact and Conclusions of Law.

Come now the defendants and request the Court, upon the evidence adduced upon the trial of this action, to make the following findings of fact:

1. That on the 19th day of September, 1910, James Wickersham was the sole owner of placer mining claim known as the Daly Bench situate on Esther Creek, in the Fairbanks Recording District, Alaska, and on said date entered into an agreement with H. J. Patterson whereby he agreed to convey to said H. J. Patterson an undivided quarter interest in said claim if said Patterson would at his own expense cause to be sunk a hole to bedrock upon said claim and the assessment work for the year 1910 to be done thereon.
2. That thereafter, but on the same day, the said H. J. Patterson agreed with Mariam A. Patterson that if she would pay the expense of sinking said hole to bedrock and doing said assessment work, with her own money, she should receive and be the owner of the title to said quarter interest; that at the time of said agreement he represented to her that the estimated expense was from \$250 to \$300.
3. That Mariam A. Patterson agreed to do so and at her expense one hole was sunk on said claim on September 20, 1910, with a steam drill to the depth of 103 feet, but the driller was doubtful whether the hole had reached bedrock and was unable to sink

said hole deeper after withdrawing the drill-bit, it being thawed ground and no casing being used, whereupon on the day following at her instance another hole was sunk on said claim to the depth of 123 feet which reached bedrock; that the sinking of said two holes constituted the doing of the assessment work for the year 1910.

4. That on September 21, 1910, Mariam A. Patterson paid to the driller \$225 for sinking said holes; that the money so paid by her was part of her own funds which she had at that time and prior thereto in deposit in bank in her own name, and which money was her sole and separate property in which her husband H. J. Patterson had no interest nor right to whatever;

5. That before said work was completed said Wickersham left Fairbanks on his way to Washington, D. C. he being the delegate in Congress from Alaska, whence he did not return until September, 1911;

6. That after said Wickersham's return to Fairbanks, said H. J. Patterson satisfied him that the work required by said agreement had been performed, and informed him that it had been done at Mariam A. Patterson's expense, and requested Wickersham to make the deed of said quarter interest to Mariam A. Patterson;

7. That on October 14, 1911, Wickersham executed a deed for said quarter interest, and without the knowledge or consent of Mariam A. Patterson named [144] H. J. Patterson as grantee therein, and delivered said deed to him on November 10,

1911, and at the same time consented that H. J. Patterson convey said quarter interest to Mariam A. Patterson.

8. That as soon as Mariam A. Patterson learned that said deed had been executed by Wickersham she demanded that H. J. Patterson convey said quarter interest to her, which said H. J. Patterson promised to do, and after repeated demands by her said H. J. Patterson did convey said quarter interest to her by quitclaim deed dated and executed November 27, 1911, and which was delivered to her a week later.

9. That the real consideration of the deed from H. J. Patterson to Mariam A. Patterson was the payment by the latter of the expense of sinking said hole to bedrock and doing the assessment work for the year 1910 with her own money, and the performance of his said promise made on September 19, 1910.

10. That the deed from H. J. Patterson to Mariam A. Patterson was made by him and received by her, in good faith, for a valuable and sufficient consideration, and without any design on the part of either of them to hinder, delay or defraud any creditor of the said H. J. Patterson.

11. That by lease dated October 12, 1911, and delivered to said H. J. Patterson on November 10, 1911, said Wickersham, without the knowledge or consent of Mariam A. Patterson, leased to said H. J. Patterson the whole of said mining claim, reserving to the said Wickersham as royalty for his interest therein 25% of the gross output of gold pro-

duced in any mining operations thereunder; that on January 29, 1912, and before any gold had been extracted from said mining claim, under said lease, and when the assignee of said lease threatened to cease mining operations, because of the apparent small content of placer gold therein, said Wickersham reduced the royalty reserved by him for his interest therein to 20% of the gross output.

12. That H. J. Patterson did not do any mining under said lease on the Daly Bench. In February 1911, he had commenced mining operations upon the Last Chance association claim on Engineer creek distant about 12 miles from said Daly Bench, which operations were unsuccessful so that he became indebted upwards of \$30,000; that all the claims of the creditors represented by the plaintiff as trustee in bankruptcy arose from the mining operations carried on on said Last Chance association claim, and not from any mining operations carried on on the Daly Bench.

13. That on November 27, 1911, but prior to the execution and delivery of said deed, from H. J. Patterson to Mariam A. Patterson of said quarter interest, the said H. J. Patterson found himself unable to carry on mining operations on the Daly Bench under the lease from Wickersham, whereupon, with the consent of said Wickersham he assigned said lease to H. C. Hamilton, without receiving or being promised any consideration therefor, and without reserving any interest therein to himself; that at the same time and by the same instru-

ment he leased to the said H. C. Hamilton the quarter interest conveyed by Wickersham, the legal title to which was then standing in his name, and reserved for said quarter interest a rent or royalty of 5% of the gross output to be produced by said Hamilton in his mining operations; that at said time no gold had been extracted from said ground and no rent or royalty had accrued.

14. That said lease to Hamilton of said quarter interest was made without the knowledge or consent of Mariam A. Patterson, but prior to the extraction of [145] any gold from said ground she assented to taking 5% of the gross output as rent or royalty for her quarter interest in said claim.

15. That at the time of the execution and delivery of said deed from H. J. Patterson to Mariam A. Patterson no gold had been extracted from said ground and no rent or royalty had accrued; that the first cleanup of gold thereon was made in May, 1912, by said Hamilton.

16. That at said first cleanup of gold said Mariam A. Patterson was present and demanded from said Hamilton 5% of the gross amount thereof as royalty for her quarter interest, which said Hamilton would have given her then and there had he not been enjoined by order of Court in this action from doing so; instead of giving it to her, pursuant to the same order, he deposited at each cleanup 5% of the total amount produced by him and his partners on said claim in court; that the total amount of gold-dust so deposited by him in court, which has been

converted into money, is \$5174.66, which fund is still in the registry of this court.

17. That said H. J. Patterson at no time demanded any part of the output of said claim, and at no time has he claimed to be entitled to receive any part thereof, since he executed and delivered to Mariam A. Patterson a deed to said quarter interest.

18. That after H. J. Patterson had assigned the Wickersham lease to Hamilton, the latter, with the knowledge and consent of Wickersham, sublet a strip of said claim 250 feet in width to the Smith Brothers; that thereafter, but prior to January 1, 1912, said H. J. Patterson agreed with the Smith Brothers that he would assist them financially in their mining operations, and as compensation therefor they agreed that said H. J. Patterson should receive 5% of the gross output produced by them in mining on said strip; that after assisting them to the extent of \$1,400 said H. J. Patterson found himself unable to perform his part of the agreement and thereupon it was mutually agreed that said contract was annulled, and said H. J. Patterson thereupon relinquished all claim to any part of their output; that thereupon said H. C. Hamilton entered into partnership with said Smith Brothers, and financed their mining operations and mined said strip; that after the annulment of said agreement between the Smith Brothers and H. J. Patterson, the latter made no further claim to any part of the output of gold produced by any mining operations upon said ground;

that at the time said agreement was annulled no gold had been extracted from said ground.

19. That neither Mariam A. Patterson nor H. J. Patterson have received any part of the gold mined upon said Daly Bench by Hamilton and his partners or by any other person, nor has any rent or royalty been paid to them or either of them. [146]

From which facts so found, and the pleadings in the case, the Court is requested to make the following conclusions of law:

1. That the purchase of the quarter interest in the Daly Bench was the payment of the expense of sinking a hole to bedrock and doing the assessment work thereon for the year 1910.

2. That when, on September 21, 1910, Mariam A. Patterson paid said purchase price she became, and ever since has been, the real beneficial and equitable owner of said quarter interest.

3. That when, on November 10, 1911, H. J. Patterson received the legal title to said quarter interest by deed from Wickersham without the knowledge or consent of Mariam A. Patterson, a resulting trust arose in favor of Mariam A. Patterson and thereafter he held the bare legal title thereto in trust for Mariam A. Patterson.

4. That the deed dated November 27, 1911, from H. J. Patterson to Mariam A. Patterson of said quarter interest was made for a valuable and sufficient consideration and was not in fraud of creditors and is valid.

5. That the deed from H. J. Patterson to Mariam A. Patterson dated November 27, 1911, was not a

voluntary conveyance nor fraudulent as to creditors of H. J. Patterson, and was made for a valuable and sufficient consideration.

6. That the parol agreement between H. J. Patterson and Mariam A. Patterson that if the latter would pay the expense of sinking a hole to bedrock and doing the assessment work thereon for the year 1910 with her own money she should have the title to the quarter interest, was validated by performance in the execution and delivery of said deed by him to her.

7. That the \$225 paid by Mariam A. Patterson as the purchase price of said quarter interest was her own sole and separate property.

8. That when Wickersham executed and delivered a deed of said quarter interest to H. J. Patterson, the effect thereof was to merge *pro tanto* the leasehold estate held by H. J. Patterson in said claim, in the fee of the quarter interest, and to extinguish relationship of lessor and lessee theretofore existing between Wickersham and H. J. Patterson so far as said quarter interest was concerned, and thereafter H. J. Patterson had a lease of Wickersham's three-quarter interest, and held the remaining quarter interest as owner of the legal title thereto.

9. That when H. J. Patterson executed and delivered to Mariam A. Patterson a deed to the quarter interest, the latter became entitled to all rents and royalties reserved to said quarter interest in the lease from H. J. Patterson to H. C. Hamilton, accruing subsequent to the delivery of said deed.

10. That Mariam A. Patterson was a bona fide holder of said quarter interest for value prior to the date of the adjudication of H. J. Patterson as a bankrupt.

11. That Mariam A. Patterson at the time of the commencement of this action and prior thereto was, and now is, the legal and equitable owner of the quarter interest in the Daly Bench which was conveyed by Wickersham to H. J. Patterson, and by the latter to her. [147]

12. That Mariam A. Patterson is entitled to receive the fund of \$5,174.66, now in the registry of this court, it being 5% of the gross output of gold produced by H. C. Hamilton and his partners in mining upon said Daly Bench under the lease of said quarter interest made to him by H. J. Patterson prior to the conveyance of the legal title thereto to Mariam A. Patterson, and that all of said royalty accrued after the making and delivery of said conveyance.

13. That defendants are entitled to judgment that plaintiff's action be dismissed.

Filed May 17, 1916.

A. R. HEILIG,
Atty. for Defendants.

And said plaintiff, before the Findings of Fact and Conclusions of Law had been made and signed by the Court and filed with the clerk thereof, requested the Court to make the following findings of fact and conclusions of law, to wit: [148]

[Title of Court and Cause.]

Plaintiff's Proposed Findings of Fact and Conclusions of Law.

The above-entitled cause coming on regularly for trial on the — day of April, 1916, the plaintiff appearing in person and by and through his attorneys, Messrs. McGowan & Clark and Mr. Harry E. Pratt, and the defendants appearing in person and by and through their attorney, Mr. A. R. Heilig, and both sides having announced themselves ready for trial, and the trial having thereupon proceeded, and oral and documentary evidence having been introduced for and on behalf of both plaintiff and defendants, and the matter having been fully argued by counsel for the respective parties and having been submitted to this Court for decision, and the Court having thereafter and on the 15th day of May, 1916, announced its decision in said matter.

Now, therefore, in pursuance thereof, the Court does now find and establish the following as its findings of fact and conclusions of law in said cause, to wit:

FINDINGS OF FACT.

(1) That on and prior to the 19th day of September, 1910, James Wickersham was the owner in fee, subject only to the paramount title of the United States, in possession of, and entitled to the possession of that certain placer mining claim, known as the Daly Bench, situate on the left limit of Esther Creek, in the Fairbanks Mining and Recording Precinct, Fourth Judicial Division, Territory of Alaska,

and that on or about said date said James Wickersham entered into a written agreement with H. J. Patterson, whereby said Wickersham agreed to convey to said H. J. Patterson an undivided one-quarter interest in and to said mining claim if said H. J. Patterson would, at his own expense, sink one hole to bedrock on said claim and do the assessment work thereon for the year 1910, which said agreement was coupled with a lease of the whole of said [149] premises.

(2) That thereafter said H. J. Patterson entered into an oral agreement with his wife, Mariam A. Patterson, one of the defendants herein, whereby said Mariam A. Patterson, in consideration of advancing the money necessary to fulfill the terms of said agreement with said Wickersham relative to acquiring a one-quarter interest in said ground, should be the owner of a one-quarter interest when title was acquired thereto, and said Mariam A. Patterson paid and advanced to said H. J. Patterson the sum of \$225, which sum was the sum necessary to be paid for causing two drill-holes to be sunk to bedrock on said ground, said work being performed in the month of September, 1910.

(3) That thereafter the defendant H. J. Patterson abandoned said lease and did no work thereunder, and subsequent to said abandonment of said lease by said H. J. Patterson a controversy arose between the stakers of the Happy Home Association claim, adjoining said Daly Bench, and the owners of said Daly Bench, relative to the ownership of the greater portion of said Daly Bench, and said

matters so in controversy were settled and adjusted between said parties on the 8th day of November, 1911, and said James Wickersham and H. J. Patterson, for the purpose of compromising said dispute, assigned and transferred to the owners of said Happy Home Association claim and their lessees a strip of ground 75 feet in width, off of the upper end of the Daly Bench, running up and down the general course of Esther Creek and parallel to the northerly line of said claim.

(4) That prior to the settlement of said controversy last referred to and on or about the 14th day of October, 1911, James Wickersham made and executed a deed to H. J. Patterson for an undivided one-quarter interest in and to said Daly Bench hereinbefore referred to, for the recited consideration of one dollar and in consideration of the doing of the assessment work thereon by the vendee for the year 1910, in compliance with the United States statutes, which said deed was delivered to said H. J. Patterson subsequent to the 8th day of November, 1911, and was by him duly filed for record on the 10th day of November, 1911, in office of the recorder of the Fairbanks Mining and Recording Precinct, Territory of Alaska.

(5) That prior to the execution of said deed by said James Wickersham to H. J. Patterson, as set forth in finding No. 4 hereof, and on the 12th day [150] of October, 1911, said James Wickersham made, executed and delivered to said H. J. Patterson a lease covering all the Daly Bench placer mining claim, together with all appurtenances and the

right and privilege to prospect and mine the same and extract therefrom all the gold-bearing placers therein contained, subject to the following condition, to wit:

“As part consideration of this lease the party of the second part agrees that his undivided one-fourth interest in said premises shall be covered and included in the terms of this lease and shall also at all times be subject to any debts, defaults or damages resulting from the working under this lease, or for violation thereof, and the said Daly claim shall at all times be worked and considered as a whole between the parties hereto, and all subject to the terms of this lease and it is especially agreed that the party of the first part shall have a first lien upon the whole of the output of the whole of the Daly claim, including the undivided one-fourth interest of the party of the second part for the payment of the royalty reserved to the party of the first part and the performance of this lease.”

That the term of said lease, as therein provided, was from the date thereof until the 12th day of October, 1915, unless sooner determined or forfeited through failure on the part of the lessee to pay and deliver the rents and royalties agreed upon, or for other violations of the conditions thereof; said lease also provided, among other things, that the lessee, as royalties and rentals, should pay and deliver to the lessor therein 25 per cent or one-quarter of the gross amount of each and every cleanup at the

time the same was finished; and also contained the following provision, to wit:

“And it is of the essence of this contract, and the party of the second part hereby specially agrees to pay and to deliver to the party of the first part, or to his duly authorized agent, in consideration of this lease, as the share, royalty and rental of the party of the first part twenty-five (25 per cent) per cent, or a full one-fourth of the gross amount of all gold-dust and other mineral extracted, mined, taken or produced from the whole of the said premises during the whole of the term of this lease or lay, and agrees to pay and deliver said one-fourth part of the said gross output of the whole of the said mining claim to the said party of the first part, or his duly authorized agent, immediately upon and after each cleanup is so made, without delay or default for any reason whatever.”

Said lease also recited that James Wickersham, the lessor therein named, was the owner of an undivided three-quarters interest in and to the property covered by said lease, and H. J. Patterson, the lessee, the owner of an undivided one-fourth thereof, and said lease was on the 10th day of November, 1911, filed for record in the office of the recorder of the Fairbanks Mining and Recording Precinct, Territory of Alaska, and recorded in volume 5 of Leases, at page 216 thereof.

(6) That thereafter and on the 29th day of January, 1912, the lessor therein [151] named consented that the share or royalty to be paid to said

lessor should be reduced from 25 per cent to 20 per cent of the gross output of the ground described in said lease, and that in all other respects the lease should remain in its original form.

(7) That subsequent to the execution of said lease from said Wickersham to said Patterson, of date of the 12th day of October, 1911, the said H. J. Patterson assigned said lease and the whole thereof to H. C. Hamilton, said assignment being in writing, and which said lease contained among other conditions the following paragraph:

“Now, therefore, this indenture witnesseth that the said H. J. Patterson does hereby lease, demise and sublet unto the said H. C. Hamilton all of the placer mining ground above described, including all his right, title and interest therein held by the said H. J. Patterson as lessee of the said Wickersham and in his own right as owner of an undivided one-fourth part of the title to said mining claim, to have and to hold unto the said H. C. Hamilton for and during the term commencing this day and ending October 12, 1915, upon the same terms, conditions and covenants and subject to the same terms and conditions as in said lease from James Wickersham to said H. J. Patterson set forth, excepting, however, that the said H. C. Hamilton shall pay as royalty and rental as such lessee twenty-five per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said demises premises to the said James Wickersham, and shall pay in addition thereto five

per cent of the gross amount of each and every cleanup of gold and gold-dust made by him upon said premises to the said H. J. Patterson, but in all other respects the terms, covenants and conditions of said lease from Wickersham to Patterson shall be binding upon the said H. C. Hamilton with the same force and effect and to all intents and purposes as if he were a party named as lessee in said lease.”

Which said lease was duly executed in the manner prescribed by law, and said Hamilton thereupon entered upon said ground and commenced the prosecution of mining operations thereon.

(8) That the defendant Mariam A. Patterson was informed of and had knowledge of the terms and conditions of the lease from Wickersham to H. J. Patterson of date of the 12th day of October, 1911, and knew the terms and conditions thereof, and had knowledge of and was fully informed of the terms and conditions of the assignment of said lease from said H. J. Patterson to said H. C. Hamilton on the 27th day of November, 1911, and assented thereto.

(9) That subsequent to the execution of said assignment to said H. C. Hamilton, but on the same day that said assignment was made, H. J. Patterson caused to be prepared and executed a deed in proper form to the defendant Mariam A. Patterson, his wife, wherein it is recited:

“That the party of the first part, for and in consideration of the [152] sum of one dollar, lawful money of the United States of America,

to him in hand paid by party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, and sold, conveyed, remised, released, and quitclaimed, and by these presents doth grant, bargain, sell, convey, remise, release, and forever quitclaim, unto the said party of the second part, her heirs and assigns, all of his right, title, and interest, being an undivided one-fourth interest of, in, and to that certain bench placer mining claim, situate in the Fairbanks Precinct, Alaska, on the left limit of Ester Creek, and known as the Pat Daly Bench Placer mining claim, being the second bench claim on the left limit and about opposite No. Three (3) creek claim above Discovery on said Ester Creek, and located by Pat Daly on December 1st, 1905, to have and to hold the same, together with the appurtenances and improvements thereon, to and unto the said party of the second part, her heirs and assigns forever."

(10) That said H. J. Patterson did not at any time assign, transfer, or set over to the defendant Mariam A. Patterson any of his rights in and to the contract with H. C. Hamilton, wherein said H. J. Patterson reserved to himself 5 per cent of the gross output of said claim, and no transfer for said five per cent of the gross output of said claim was ever made by said H. J. Patterson to said Mariam A. Patterson.

(11) That said H. C. Hamilton and other parties working under him extracted large quantities of

gold-bearing gravel and earth from the said Daly Bench and in the spring of the year 1912 cleaned up the dumps of gold-bearing gravel and earth so extracted from said ground, and said defendant Mariam A. Patterson demanded five per cent thereof as owner of the property, claiming the same as royalties due to her by virtue of being the owner of an undivided one-quarter interest in said Daly Bench, and plaintiff in this action, as trustee for the creditors of said H. J. Patterson, a bankrupt, instituted an action in this court, wherein certain orders were made and said five per cent of the gross output of said claim, extracted during the year 1912, amounting to the sum of \$5,174.66, was thereafter deposited in the registry of this court and was there held to await the outcome of this action.

(12) That subsequent to the transfer by said H. J. Patterson to Mariam A. Patterson of an undivided one-quarter interest in said Daly Bench, as hereinabove set forth, and on the 16th day of April, 1912, defendant H. J. Patterson filed a voluntary petition in this court to be adjudged a bankrupt, and was on said date adjudged a bankrupt, and plaintiff in this action was thereafter duly appointed trustee for the creditors of said bankrupt, and thereafter qualified as such, [153] and ever since said time has been, and now is, the duly appointed, qualified, and acting trustee for the creditors of H. J. Patterson, a bankrupt.

(13) That said transfer by said H. J. Patterson to Mariam A. Patterson of said undivided one-quarter interest in and to said Daly Bench was not done

for the purpose of cheating and defrauding the creditors of said H. J. Patterson, but for the purpose of vesting in said Mariam A. Patterson the legal title to said undivided one-quarter interest in said Daly Bench, said Mariam A. Patterson having theretofore and since the 19th day of September, 1910, been the equitable owner thereof.

(14) That said H. J. Patterson was insolvent on the 27th day of November, 1911, and at all times subsequent thereto up until the time of his adjudication as a bankrupt.

(15) That all the moneys now in the registry of this court in this cause, to wit, the sum of \$5,174.66, are the proceeds of five per cent of the gold-dust washed from the gravels extracted from the Daly Bench during the year 1912 and the said 5 per cent of said gold-dust is the same 5 per cent that was reserved to said H. J. Patterson under his agreement with H. C. Hamilton, as hereinabove set forth. [154]

Having found and established the foregoing as its findings of fact, this Court does now make and establish its conclusion of law based thereon, as follows, to wit:

CONCLUSIONS OF LAW.

(1) That the deed from H. J. Patterson to Mariam A. Patterson of an undivided one-quarter interest in and to said Daly Bench vested in said Mariam A. Patterson the legal title to said property, subject to all the liens and charges against said property placed or suffered to be placed thereon by the defendant H. J. Patterson, and particularly subject to the terms and conditions of that certain lease from

James Wickersham to H. J. Patterson under date of the 12th day of October, 1911, and no royalties were reserved to the owner of said undivided one-quarter interest in said Daly Bench under the terms and conditions of said lease.

(2) That the five per cent of the gross output of the gold and gold-dust extracted from said Daly Bench, reserved by said H. J. Patterson in his contract with H. C. Hamilton under date of 27 November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench and not as the owner of an interest therein.

(3) That the deed from H. J. Patterson to Mariam A. Patterson of date of the 27th day of November, 1911, did not transfer to said Mariam A. Patterson any part of the five per cent of the gross output of the Daly Bench, reserved by said H. J. Patterson under his contract with H. C. Hamilton of even date therewith, and said Mariam A. Patterson acquired no right, title, or interest in or to said five per cent of the gross output of said claim under and by virtue of the terms of said deed from said H. J. Patterson.

(4) That said Mariam A. Patterson has no right, title, or interest in or to any part of the gold-dust or the proceeds thereof now in the registry of this court in this cause, the same being the proceeds of five per cent of the gold and gold-dust extracted from said claim and washed from the pay-gravels therein contained in the year 1912.

(5) That all the moneys and gold-dust now in the registry of this court [155] in this cause are the

property of the plaintiff in this action as trustee for the creditors of H. J. Patterson, a bankrupt, and should be paid and delivered to plaintiff herein, to be disposed of by him in the manner directed by law in his representative capacity as trustee for said creditors.

(6) That Mariam A. Patterson was at all times subsequent to about the 19th day of September, 1910, the equitable owner of an undivided one-quarter interest in and to the Daly Bench placer mining claim, hereinabove described, and the defendant H. J. Patterson was *per* agent, and said Mariam A. Patterson is bound by all the acts and things done by said H. J. Patterson in connection with said interest.

(7) That said Mariam A. Patterson, under the deed from H. J. Patterson to herself, of date of the 27th day of November, 1911, received the legal title to said undivided one-quarter interest in and to said Daly Bench claim, subject to all the burdens theretofore placed upon the same by her said agent H. J. Patterson, and said Mariam A. Patterson under and by virtue of said deed did not acquire any right, title or interest in or to any of the royalties, moneys, or gold-dust reserved to said H. J. Patterson under and by virtue of the lease to H. J. Patterson from James Wickersham or the transfer thereof to said H. C. Hamilton, and the agreement with H. C. Hamilton, which said last mentioned agreement was of date of the 27th day of November, 1911.

(8) That Mariam A. Patterson is entitled to a judgment of this Court, adjudging her to be the legal owner of a one-quarter interest in the Daly Bench

placer mining claim hereinabove described.

(9) That plaintiff herein is entitled to a judgment of this Court, decreeing him to be the owner, as trustee in bankruptcy for the creditors of said H. J. Patterson, a bankrupt, and entitled to the possession of, all the gold-dust and proceeds of gold-dust now in the registry of this court in this cause, amounting to the sum of \$5174.66, and for an order directing the clerk of this court to pay and deliver to said plaintiff all the moneys and gold-dust now held by said clerk in said cause as aforesaid.

(10) That plaintiff is entitled to the entry of a judgment against defendants [156] and each of them for all his costs incurred in this action.

Let judgment be entered accordingly.

Dated at Fairbanks, Alaska, this 17th day of May, 1916.

Filed May 17, 1916.

To which findings of fact and conclusions of law requested by plaintiff the defendants made and filed the following objections and proposed the following amendments to wit; [157]

[Title of Court and Cause.]

**Defendants' Objections and Proposed Amendments
to Plaintiff's Proposed Findings of Facts and
Conclusions of Law.**

Defendants hereby submit to the Court the following objections and proposed amendments to the findings of fact and conclusions of law proposed by plaintiff, served and filed May 17, 1916:

1. Substitute for paragraph 2 thereof paragraphs 2, 3, 4, 5, and 6 of defendants' request for findings filed herein.

Defendants object to the word "advancing" in the third line of said paragraph and the words "and advanced to said H. J. Patterson" in the seventh line thereof, and the word "two" in the eighth line thereof, as being contrary to the evidence, and the phrase "in the month of September 1910" as being indefinite, the evidence showing that said work was done on September 20 and 21, 1916.

2. Strike out all of paragraph 3 after the word "thereunder" in the second line, as it is immaterial.

3. Strike out from paragraph 4 the words "prior to the settlement of said controversy last referred to and" in the first and second lines thereof, because they are immaterial.

4. Strike out all of paragraph 7, and substitute therefor the following: That on November 27, 1911, said H. J. Patterson executed and delivered to H. C. Hamilton an instrument of which the following is a copy (here copy instrument in full), and then follow with the last three lines in said paragraph.

5. Defendants object to all of paragraph eight as being contrary to the evidence.

6. Defendants object to all of paragraph 10 as being contrary to the evidence.

7. Strike out all of paragraph 11 and substitute therefor paragraphs 15, 16, and 17 of defendants' requests for findings.

8. Strike out all of paragraph 12 as the matter therein contained is admitted in the pleadings.

9. Strike out the words "cheating and" in the third line of paragraph 13 and substitute therefor the words "hindering, delaying or."

10. Add to plaintiff's request for findings the following paragraphs contained in defendants' requests for findings, to wit, paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19. [158]

And defendants submit to the Court the following objections to the conclusions of law proposed by plaintiff:

1. Defendants object to all of paragraph 1 thereof after the word property in the third line, upon the ground that it is not warranted by the evidence and the findings of fact.

2. Defendants object to all of paragraph 2 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

3. Defendants object to all of paragraph 3 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

4. Defendants object to all of paragraph 4 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

5. Defendants object to all of paragraph 5 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

6. Defendants object to that part of paragraph 6 thereof occurring after the word "described" in the third line thereof, on the ground that it is not warranted by the evidence and the findings of fact.

7. Defendants object to that part of paragraph 7 thereof occurring after the word "claim" in the

third line thereof, on the ground that it is not warranted by the evidence and the findings of fact.

8. Defendants object to all of paragraph 9 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

9. Defendants object to all of paragraph 10 thereof upon the ground that it is not warranted by the evidence and the findings of fact.

And defendants propose as amendments to plaintiff's proposed conclusions of law the addition of the following paragraphs contained in defendants' proposed conclusions of law, to wit, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

Filed May 18, 1916.

A. R. HEILIG,
Atty. for Defendants.

And thereupon, on May 20, 1916, the Court made and filed its Findings of Fact and Conclusions of Law with the clerk of said court, and thereupon defendants excepted to such findings of fact and conclusions of law, and to the overruling of the objections of said defendants made prior to the time that said findings of fact and conclusions of law were signed by the Judge of above-entitled court; and also excepted to the refusal of the Court to make findings of fact and conclusions of law as requested by said defendants as hereinafter more particularly specified, to wit: [159]

[Title of Court and Cause.]

**Defendants' Exceptions to the Findings of Facts
and Conclusions of Law Herein.**

Comes now the defendants and except to the following paragraphs and parts of paragraphs contained in the findings of fact this day made by the Court, over the objections of defendants heretofore made and filed:

They except to finding of fact number eight.

They except to finding of fact number ten.

And defendants except to the following paragraphs and parts of paragraphs contained in the conclusions of law this day made by the Court over the objections of defendants heretofore made and filed:

They except to that part of conclusion of law number one, which reads, "subject to the terms and conditions of that certain lease from James Wickersham to H. J. Patterson, dated 12 October, 1911."

They except to conclusion of law number two.

They except to conclusion of law number three.

They except to that part of conclusion of law number four, which reads "That said Mariam A. Patterson has no right, title or interest in or to any part of the gold or gold-dust or the proceeds thereof now in the registry of this court in this cause."

They except to conclusion of law number five.

They except to that part of conclusion of law number six, which reads as follows, "and the defendant H. J. Patterson was her agent and said Mariam A. Patterson is bound by all the acts and things done

by the said H. J. Patterson in connection with the said interest."

They except to that part of conclusion of law number seven, which reads as follows, "subject to all the burdens theretofore placed upon the same by her said agent H. J. Patterson, and said Mariam A. Patterson under and by virtue of said deed did not acquire any right, title or interest in or to any of the royalties, moneys, or gold-dust reserved to said H. J. Patterson under and by virtue of the lease to said H. J. Patterson from James Wickersham, or the transfer thereof to said H. C. Hamilton and the agreement with H. C. Hamilton which said last-mentioned agreement was dated 27 November, 1911."

They except to conclusion of law number nine.

They except to conclusion of law number ten.

Defendants further except to the refusal of the Court to make the following findings of fact requested by defendants and heretofore submitted to the Court and filed in this cause, to wit, they except to the refusal of the Court to make findings numbered 2, 3, 5, 6, 8, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

Defendants further except to the refusal of the Court to make the following conclusions of law requested by defendants and heretofore submitted to the Court and filed in this cause, to wit, they except to the refusal of the Court to make conclusions of law numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13.

Dated at Fairbanks, Alaska, on this 20th day of May, 1916.

Foregoing exceptions allowed this 20th day of May, 1916.

A. R. HEILIG,
Atty. for Defendants.

CHARLES E. BUNNELL,
District Judge.

Filed May 20, 1916. [160]

And now, in pursuance of justice and that right may be done, the defendants present the foregoing as their Bill of Exceptions in this cause and pray that the same may be settled and allowed and certified by the Judge of this court in the manner provided by law.

A. R. HEILIG,
Attorney for Defendants.

Service of a true copy of the foregoing Bill of Exceptions is hereby acknowledged this 4 day of November, 1916, by receipt of a true copy duly certified to be such.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff. [161]

[Title of Court and Cause.]

Order Allowing and Settling Defendants' Bill of Exceptions and Approving Defendants' Statement of the Evidence.

Be it remembered that upon the 5th day of December, 1916, the above-named defendants presented the foregoing Bill of Exceptions and statement of evidence to the Court for settlement and approval, which

said proposed Bill of Exceptions and statement of evidence was served and lodged with the clerk of the court and filed within the time allowed by the orders of this Court; and it appearing to the Court from the examination of the proposed Bill of Exceptions and statement of evidence that the same contains all the evidence, testimony and exhibits introduced and given upon the trial of said cause in support of and against the allegations and denials of the complaint, answers and replies herein relative to the claim of plaintiff and defendants respectively to the fund of \$5,174.66 in the registry of the court in this case, said claim being the only matter presented by this appeal, as well as all of the proceedings therein not of record in relation to said matter, and is in all respects true, correct and complete,—

Now, therefore, on motion, it is hereby ordered that the foregoing pages from one to 116, inclusive, be, and the same is hereby, approved, allowed and settled as the Bill of Exceptions and statement of evidence in the above-entitled cause and made a part of the record herein and that the same has been filed and lodged with the clerk of this court and presented within the time allowed by the orders of this court.

Dated at Fairbanks, Alaska, this 5th day of December, 1916.

CHARLES E. BUNNELL,
District Judge. [162]

Entered in Court Journal No. 13, page 719, at Fairbanks, Alaska.

Service of copy of foregoing order settling Bill of Exceptions and Statement of Evidence acknowledged.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 5, 1916. J. E. Clark, Clerk. By L. F. Protzman, Deputy.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 4, 1916. J. E. Clark, Clerk. By L. F. Protzman, Deputy. [163]

[Title of Court and Cause.]

Order Enlarging Time for Defendants to Prepare, Settle and File a Bill of Exceptions.

And now, to wit, October 4, 1916, the time in which defendants may prepare, settle and file their Bill of Exceptions in this case is enlarged to twenty days from this date.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 613.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 4, 1916. J. E. Clark, Clerk. [164]

[Title of Court and Cause.]

Order Enlarging Time for Defendants to Prepare, File and Settle Bill of Exceptions.

Now, on this day, counsel for the respective parties being present in court and upon oral motion of A. R. Heilig, counsel for the defendants:

IT IS ORDERED that the time in which the defendants have to prepare, file and settle Bill of Exceptions be, and is hereby, enlarged and extended to November 15th, 1916.

CHARLES E. BUNNELL,
District Judge. [165]

[Title of Court and Cause.]

Assignment of Errors.

Come now the above-named defendants and file the following assignment of errors upon which they will rely upon their appeal from the judgment and decree made by this Honorable Court on the 4th day of October, 1916, in the above-entitled cause:

1.

The Court erred in refusing to make the finding of fact set forth in paragraph 13 of defendants' proposed findings of fact and conclusions of law, as follows:

That on November 27, 1911, but prior to the execution and delivery of said deed from H. J. Patterson to Mariam A. Patterson of said quarter interest, the said H. J. Patterson found himself unable to carry on mining operations on the Daly Bench under the

lease from Wickersham, whereupon, with the consent of said Wickersham he assigned said lease to H. C. Hamilton without receiving or being promised any consideration therefor, and without reserving any interest therein to himself; that at the same time and by the same instrument he leased to the said H. C. Hamilton the quarter interest conveyed by Wickersham, the legal title to which was then standing in his name, and reserved for said quarter interest a rent or royalty of 5% of the gross output to be produced by said Hamilton in his mining operations; that at said time no gold had been extracted from said ground and no rent or royalty had accrued.

[166]

2.

The Court erred in refusing to make the finding of fact set forth in paragraph 14 of defendants' proposed findings of fact, as follows:

That said lease to Hamilton of said quarter interest was made without the knowledge or consent of Mariam A. Patterson, but prior to the extraction of any gold from said ground she assented to take 5% of the gross output as rent or royalty for her quarter interest in said claim.

3.

The Court erred in refusing to make the finding of fact set forth in paragraph 15 of defendants' proposed findings of fact, as follows:

That at the time of the execution and delivery of said deed from H. J. Patterson to Mariam A. Patterson, no gold had been extracted from said ground and no rent or royalty had accrued; that the first

cleanup of gold thereon was made in May, 1912, by said Hamilton.

4.

The Court erred in refusing to make the finding of fact set forth in paragraph 16 of defendants' proposed findings of fact, as follows:

That at said first cleanup of gold said Mariam A. Patterson was present and demanded from said Hamilton 5% of the gross amount thereof as royalty for her quarter interest, which said Hamilton would have given her then and there had he not been enjoined by order of Court in this action from doing so; instead of giving it to her, pursuant to the same order, he deposited at each cleanup 5% of the amount produced by him and his partners on said claim in court; that the total amount of gold so deposited by him in court, which has been converted into money, is \$5,174.60, which fund is still in the registry of this court. [167]

5.

The Court erred in refusing to make the finding of fact set forth in paragraph 17 of defendants' proposed findings of fact, as follows:

That said H. J. Patterson at no time demanded any part of the output of said claim and at no time has he claimed to be entitled to receive any part thereof since he executed and delivered to Mariam A. Patterson a deed to said quarter interest.

6.

The Court erred in refusing to make the finding of fact set forth in paragraph 18 of defendants' proposed findings of fact, as follows:

That after H. J. Patterson had assigned the Wickersham lease to Hamilton, the latter, with the knowledge and consent of Wickersham sublet a strip of said claim 250 feet in width to the Smith Brothers; that thereafter, but prior to January 1, 1912, said H. J. Patterson agreed with the Smith Brothers that he would assist them financially in their mining operations, and as compensation therefor they agreed that said H. J. Patterson should receive 5% of the gross output produced by them in mining on said strip; that after assisting them to the extent of \$1,400, said H. J. Patterson found himself unable to perform his part of the agreement and thereupon it was mutually agreed that said contract was annulled, and said H. J. Patterson thereupon relinquished all claim to any part of their output; that thereupon said H. C. Hamilton entered into partnership with said Smith Brothers and financed their mining operations and mined said strip; that after the annulment of said agreement between the Smith Brothers and H. J. Patterson the latter made no further claim to any part of the output of gold produced by any mining operations upon said ground; that at the time said agreement was annulled no gold had been extracted from said ground. [168]

7.

The Court erred in refusing to make the finding of fact set forth in paragraph 19 of defendants' proposed findings of fact, as follows:

That neither Mariam A. Patterson nor H. J. Patterson have received any part of the gold mined upon said Daly Bench by Hamilton and his partners or

by any other person, nor has any rent or royalty been paid to them or either of them.

8.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 9 of defendants' proposed conclusion of law, which is as follows:

That when H. J. Patterson executed and delivered to Mariam A. Patterson a deed to the quarter interest the latter became entitled to all rents and royalties reserved to said quarter interest in the lease from H. J. Patterson to H. C. Hamilton accruing subsequent to the delivery of said deed.

9.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 12 of defendants' proposed conclusions of law, which is as follows:

That Mariam A. Patterson is entitled to receive the fund of \$5,174.66 now in the registry of this court, it being 5% of the gross output of gold produced by H. C. Hamilton and his partners in mining upon said Daly Bench under the lease of said quarter interest made to him by H. J. Patterson prior to the conveyance of the legal title thereto to Mariam A. Patterson and that all of said royalty accrued after the making and delivery of said conveyance. [169]

10.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 13 of defendant's proposed conclusions of law, which is as follows:

That defendants are entitled to judgment that plaintiff's action be dismissed.

11.

The Court erred in overruling the defendants' objections to the finding of fact number 8 of the findings of fact filed in this cause, and in making the same, which is as follows:

That the defendant Mariam A. Patterson was informed of and had knowledge of the terms and conditions of the lease from said Wickersham to H. J. Patterson, dated 12 October, 1911, and knew the terms and conditions thereof and had knowledge of and was fully informed of the terms and conditions of the assignment of said lease from said H. J. Patterson to said H. C. Hamilton dated 27 November, 1911, and assented thereto.

12.

The Court erred in overruling the defendants' objections to the finding of fact number 10 of the findings of fact filed in this cause, and in making the same, which is as follows:

That the said H. J. Patterson did not at any time assign, transfer or set over to the defendant Mariam A. Patterson any of his rights in and to the contract with H. C. Hamilton wherein said H. J. Patterson reserved to himself five per cent of the gross output of said claim and no transfer of said five per cent of the gross output of said claim was ever made by said H. J. Patterson to said Mariam A. Patterson.

[170]

13.

The Court erred in overruling defendants' objections to that part of conclusion of law number 1 of the conclusion of law made and filed in this clause,

and in making the same, which reads as follows:

“Subject to the terms and conditions of that certain lease from James Wickersham to H. J. Patterson dated 12 October, 1911.”

14.

The Court erred in overruling defendants' objections to conclusion of law number 2 made and filed in this cause, and in making the same, which is as follows:

That the five per cent of the gross output of the gold and gold-dust extracted from said Daly Bench, reserved by said H. J. Patterson in his contract with H. C. Hamilton dated 27 November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench and not as the owner of an interest therein.

15.

The Court erred in overruling defendants' objections to conclusion of law number 3, made and filed in this cause and in making the same, which is as follows:

That the deed from H. J. Patterson to Mariam A. Patterson, dated 27 November, 1911, did not transfer to said Mariam A. Patterson any part of the five per cent of the gross output of the Daly Bench reserved by said H. J. Patterson under his contract with H. C. Hamilton of even date therewith, and said Mariam A. Patterson acquired no right, title or interest in or to said five per cent of the gross output of said claim under and by virtue of the terms of said deed from said H. J. Patterson. [171]

16.

The Court erred in overruling defendants' objec-

tions to that part of conclusion of law number 4 of the conclusion of law signed and filed in this cause, and in making the same, which is as follows:

“That said Mariam A. Patterson has no right, title or interest in or to any part of the gold or gold-dust or the proceeds thereof now in the registry of the court in this cause.”

17.

The Court erred in overruling defendants' objections to conclusion of law number 5 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

That all the moneys and gold-dust now in the registry of this Court in this cause are the property of the plaintiff in this action as trustee for the creditors of H. J. Patterson, a bankrupt, and should be paid and delivered to plaintiff herein to be disposed of by him in the manner directed by law, in his representative capacity as trustee for said creditors.

18.

The Court erred in overruling defendants' objections to that part of conclusion of law number 6 of the conclusions of law made and filed in this case, and in making the same, which is as follows:

“And the defendant H. J. Patterson was her agent and said Mariam A. Patterson is bound by all the acts and things done by the said H. J. Patterson in connection with said interest.” [172]

19.

The Court erred in overruling the defendants' objections to that part of conclusion of law number 7 of the conclusions of law signed and filed in this

cause, and in making the same, which is as follows:

“Subject to all the burdens theretofore placed upon the same by her said agent H. J. Patterson and said Mariam A. Patterson under and by virtue of said deed did not acquire any right, title or interest in or to any of the royalties, moneys or gold-dust reserved to said H. J. Patterson under and by virtue of the lease to said H. J. Patterson from James Wickersham *from James Wickersham*, or the transfer thereof to said H. C. Hamilton and the agreement with H. C. Hamilton, which said last mentioned agreement was dated 27 November, 1911.”

20.

The Court erred in overruling the defendants' objections to conclusion of law number 9 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

That plaintiff herein is entitled to a judgment of this Court decreeing him to be the owner, as trustee for the creditors of said H. J. Patterson, a bankrupt, and entitled to the possession of all the gold and gold-dust and proceeds of gold-dust now in the registry of this Court in this cause, amounting to the sum of \$5,174.66, and for an order directing the clerk of this court to pay and deliver to said plaintiff all the moneys and gold-dust now held by said clerk in said cause as aforesaid.

21.

The Court erred in overruling defendants' objections to conclusion of law number 10 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows: [173]

That plaintiff is entitled to entry of a judgment against defendants and each of them for all his costs incurred in this action.

22.

The Court erred in making, rendering and entering the following part of a judgment and decree in favor of the plaintiff and against the defendants, which is as follows:

“That the deed to the said property from H. J. Patterson to Mariam A. Patterson of date the 27th day of November, 1911, was subject to the terms and conditions of a certain lease from James Wickersharn to H. J. Patterson, dated the 12th day of October, 1911, and no royalties were reserved by the owner of said interest so conveyed to Mariam A. Patterson under the terms and conditions of said lease, and the five per cent of the gross output of all the gold and gold-dust extracted from said Daly Bench reserved by H. J. Patterson in his contract with H. C. Hamilton dated the 27th day of November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench and not as the owner of an interest therein.

That Mariam A. Patterson has no right, title or interest either legal or equitable in or to the gold and gold-dust or the proceeds thereof impounded with the clerk of this court in this action, amounting to the sum of \$5,174.66, and that the creditors of H. J. Patterson, a bankrupt, are the owners thereof, and the plaintiff in this action, as trustee for the creditors of H. J. Patterson, a bankrupt, is entitled to the possession thereof, for the purpose of distrib-

uting the same in the manner prescribed by the bankruptcy laws, and that the clerk of this court be, and he is, hereby ordered [174] and directed to pay to the plaintiff herein, as trustee for the creditors of H. J. Patterson, a bankrupt, on the first day of November, 1916, all moneys now in the hands of the clerk of this court impounded in this cause, less such percentage thereof as said clerk is by law entitled to receive for impounding the same, unless said defendant Mariam A. Patterson has, on or before the said date filed with the said clerk of said court a supersedeas bond on appeal in this cause, duly approved by this Court being for such sum as may hereafter be fixed by order of the Court.

That the plaintiff *is* this action, as trustee for the creditors of H. J. Patterson, a bankrupt, is the owner of five per cent of all the gold and gold-dust extracted from said Daly Bench subsequent to the adjudication of said H. J. Patterson, a bankrupt, reserved to said H. J. Patterson under said contract of said H. J. Patterson with H. C. Hamilton, of date of the 27th day of November, 1911, from all persons working said ground under said contract.

That the plaintiff herein be, and he is, hereby given and granted judgment against the defendants, and each of them, for all his costs incurred in this action, to be taxed by the clerk of this court.

23.

The Court erred in not making, rendering and entering a decree in favor of the defendant Mariam A. Patterson and against the plaintiff to the effect that defendant Mariam A. Patterson is owner of

and entitled to receive the fund of \$5,174.66 now in the registry of the court, and that the clerk of the court pay said fund to her less his commission for receiving and disbursing the same. [175]

WHEREFORE defendants pray that the judgment and decree of said Court be vacated and set aside in so far as it relates to the fund of \$5,174.66 now in the registry of the court in this cause, and that judgment and decree be entered in favor of the defendant Mariam A. Patterson to the effect that she is the owner of and entitled to receive said fund, and that plaintiff recover nothing by this action and that defendants recover their costs and disbursements; and that they have such other and further relief as in accordance with the law they are entitled to receive.

A. R. HEILIG,
Attorney for Defendants.

Service of the foregoing assignment of errors is hereby acknowledged at Fairbanks, Alaska, this 4th day of December, 1916, by receipt of a true copy thereof.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 4, 1916. J. E. Clark, Clerk. [176]

[Title of Court and Cause.]

**Petition for Allowance of Appeal and Order
Granting Same.**

The above-named defendants, Mariam A. Patterson and H. J. Patterson, conceiving themselves aggrieved by that part of the order, judgment and decree made and entered in the above-entitled court and cause on the 4th day of October, 1916, wherein it was adjudged and decreed:

“(2) That the deed to the said property from H. J. Patterson to Mariam A. Patterson of date the 27th day of November, 1911, was subject to the terms and conditions of a certain lease from James Wickersham to H. J. Patterson, dated the 12th day of October, 1911, and no royalties were reserved by the owner of said interest so conveyed to Mariam A. Patterson under the terms and conditions of said lease, and the five per cent of the gross output of all the gold and gold-dust extracted from said Daly Bench reserved by H. J. Patterson in his contract with H. C. Hamilton dated the 27th day of November, 1911, was reserved to said H. J. Patterson as lessee of said Daly Bench and not as the owner of an interest therein.

(3) That Mariam A. Patterson has no right, title or interest either legal or equitable, in or to the gold and gold-dust or the proceeds thereof impounded with the clerk of this court, in this action, amounting to the sum of \$5,174.66, [177] and that the creditors of H. J. Patterson, a bankrupt, are the owners thereof, and that plaintiff in this action, as trustee for the creditors of H. J. Patterson, a bankrupt, is

entitled to the possession thereof for the purpose of distributing the same in the manner prescribed by the bankruptcy laws, and that the clerk of this court be, and he is, hereby ordered and directed to pay to the plaintiff herein, as trustee for the creditors of H. J. Patterson, a bankrupt, on the first day of November, 1916, all moneys now in the hands of the clerk of this court impounded in this cause, less such percentage thereof as said clerk is by law entitled to receive for impounding the same, unless said defendant Mariam A. Patterson has on or before the said date filed with the said clerk of said court a supersedeas bond on appeal in this cause duly approved by this court, being for such sum as may hereafter be fixed by order of the Court.

(4) That the plaintiff in this action as trustee for the creditors of H. J. Patterson, a bankrupt, is the owner of five per cent of all the gold and gold-dust extracted from said Daly Bench subsequent to the adjudication of said H. J. Patterson, a bankrupt, reserved to said H. J. Patterson under said contract of said H. J. Patterson with H. C. Hamilton of date the 27th day of November, 1911, from all persons working said ground under said contract.

All of which is finally ordered, adjudged and decreed at the cost of the defendants.

Do hereby appeal from the above quoted part of said order, judgment and decree made and entered on the 4th day of October, 1916, to the United States Circuit Court of Appeals for the Ninth Circuit, for [178] the reason specified in the assignment of errors filed herein; and they pray that this appeal

may be allowed, and that the transcript of the record, papers and proceedings upon which said part of said judgment and decree was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and they pray that the Court fix the amount of the security which the said defendants shall give and furnish upon such appeal and that upon the giving of such security all further proceedings in this court be suspended and stayed as against the said defendants until the determination of said appeal by said Circuit Court of Appeals.

A. R. HEILIG,
Attorney for Defendants.

Service of the foregoing petition for allowance of appeal is hereby admitted at Fairbanks, Alaska, this 4th day of December, 1916, by receipt of a copy thereof.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff,

The foregoing petition on appeal is granted.

Done in open court this 4th day of December, 1916.

CHARLES E. BUNNELL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 4, 1916. J. E. Clark, Clerk.

[Title of Court and Cause.]

Order Allowing Appeal and Fixing Amount of Bond.

Now, on this 4th day of December, 1916, the same being one of the judicial days of the general February, 1916 term, holden at Fairbanks, Alaska, this cause came on to be heard upon defendants' petition for an appeal; and the Court being advised in the premises,—

IT IS ORDERED that the defendants' appeal to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and the same is hereby allowed.

And said defendants having heretofore announced in open court their intention to appeal from that part of the judgment of this court made and entered in this cause on October 4, 1916, awarding to the plaintiff the sum of \$5,174.66 not in the registry of this court in this cause, and the Court having thereupon fixed the amount of the supersedeas and cost bond on appeal in the sum of \$1,000 and the defendants having heretofore and on November 1, 1916, filed in this court and cause a supersedeas and cost bond on appeal in said sum of \$1,000, with sufficient surety, which bond and surety have been approved by this Court, it is further ordered that said bond so approved and filed shall operate both as a supersedeas and cost bond on appeal in this case and have the effect of suspending that part of the judgment of this court so appealed from.

Done in open court this 4th day of December, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 712.

[Endorsed] : Filed in the District Court, Territory of Alaska, 4th Div. Dec. 4, 1916. J. E. Clark, Clerk.
[180]

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: We, Mariam A. Patterson and H. J. Patterson, as principals, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Edward Stroecker, as trustee of the estate of H. J. Patterson, a bankrupt, plaintiff herein, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Edward Stroecker, as trustee aforesaid, plaintiff herein, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of October, 1916.

WHEREAS, lately, in the District Court for the Territory of Alaska, Fourth Judicial Division, holden at Fairbanks, Alaska, in a suit pending in said court between Edward Stroecker, as trustee for the creditors of H. J. Patterson, a bankrupt, as plaintiff, and Mariam A. Patterson and H. J. Patterson, as defend-

ants, a judgment was by the above-entitled court given and rendered, to wit, on October 4, 1916, in which it is ordered, adjudged and decreed that Mariam A. Patterson has no right, title or interest either legal or equitable in or to the gold and gold-dust or the proceeds thereof impounded with the clerk of this court in this action, amounting to the sum of \$5,174.66, and that [181] the creditors of H. J. Patterson, a bankrupt, are the owners thereof, and that plaintiff in this action as trustee for the creditors of H. J. Patterson, a bankrupt, is entitled to the possession thereof, for the purpose of distributing the same in the manner prescribed by the bankruptcy laws, and that the clerk of this court be, and he is, hereby ordered and directed to pay to the plaintiff herein as trustee for the creditors of H. J. Patterson, a bankrupt, on the first day of November, 1916, all moneys now in the hands of the clerk of this court impounded in this cause, less such percentage thereof as said clerk is by law entitled to receive for impounding the same, unless said defendant Mariam A. Patterson has, on or before said date, filed with the clerk of said court a supersedeas bond on appeal in this cause, duly approved by this Court, being for such sum as may hereafter be fixed by order of the Court, and that said plaintiff recover his costs incurred in this action.

AND WHEREAS said defendants did on the 13th day of October, 1916, announce in open court their intention to appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and requested the Court to fix the amount of an

appeal bond to be given by defendants to act as a supersedeas and cost bond upon such appeal, and the Court having fixed the amount of such bond in the sum of one thousand dollars, for the stay of execution and a supersedeas of the judgment and for costs on appeal.

AND WHEREAS above-named defendants intend to prosecute an appeal to said Circuit Court of Appeals to reverse that part of said judgment above recited;

NOW, THEREFORE, the condition of the foregoing obligation is such that if the said defendants Mariam A. Patterson and H. J. Patterson shall prosecute said appeal to effect, or shall pay and answer all damages and costs if they shall fail to make [182] good their said plea on said appeal, then this obligation shall be void; otherwise to remain in full force, effect and virtue.

H. J. PATTERSON, (Seal)

MARIAM A. PATTERSON, (Seal)

By A. R. HEILIG,
Her Attorney.

[Seal] UNITED STATES FIDELITY & GUARANTY COMPANY.

By WALLACE CATHCART, (Seal)
Atty. in Fact.

By A. R. HEILIG, (Seal)
Atty. in Fact.

Above bond approved Nov. 1, 1916.

CHARLES E. BUNNELL,
District Judge.

O. K. as to form and sufficiency.

McGOWAN & CLARK,
Attys. for Plaintiff.

[Endorsed] : Filed in the District Court, Territory
of Alaska, 4th Div. Nov. 1, 1916. J. E. Clark, Clerk.
[183]

[Title of Court and Cause.]

**Order Extending Return Day and for Docketing of
Appeal to and Including February 5, 1917.**

It having been stipulated and agreed by and between the parties hereto through their respective attorneys that the return day and the time for docketing the appeal in this action may be extended to and including the 5th day of February, 1917, on account of the great distance of Fairbanks, Alaska, from San Francisco, California, and the uncertainty of the mail:

Now, therefore, it is hereby ordered that the return day and the time for docketing said cause be and is hereby enlarged to and including the 5th day of February, 1917.

Dated at Fairbanks, Alaska, this 4th day of December, 1916.

CHARLES E. BUNNELL,
District Judge.

Due service of above order, by receipt of copy, admitted this 4th day of December, 1916.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff and Appellee.

Entered in Court Journal No. 13, page 712.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Dec. 4, 1916. J. E. Clark, Clerk.
[184]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, J. E. Clark, Clerk of the District Court for the Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 186 pages, numbered from 1 to 186, inclusive, constitute a full, true and correct transcript of the record on appeal in cause No. 1769, Edward Stroecker as Trustee of the Estate of H. J. Patterson, a Bankrupt, Plaintiff and Appellee, vs. Mariam A. Patterson and H. J. Patterson, Defendants and Appellants, and was made pursuant to and in accordance with the praecipe of the appellants filed in this action, and made a part of this transcript, and by virtue of the Citation issued in said cause and is the return thereof in accordance therewith, and I certify that the Citation, annexed hereto, is the original thereof; and I do further certify that the index, consisting of pages i to iii, is a correct index of said transcript on appeal; also that the cost of preparing said transcript and this certificate, amounting to ninety and 20/100 dollars (\$90.20), has been paid to me by counsel for appellants in this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this court this 19th day of December, 1916.

[Seal]

J. E. CLARK,

Clerk of District Court, Territory of Alaska, Fourth Division. [185]

[Title of Court and Cause.]

Citation on Appeal.

The President of the United States of America, to
Above-named Plaintiff, Edward Stroecker, as
Trustee of the Estate of H. J. Patterson, a Bank-
rupt, Greeting:

You are hereby cited and admonished to appear and be in the United States Circuit Court of Appeals for the Ninth Circuit, in San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal made and entered in the above-entitled cause, in which Edward Stroecker, as trustee of the estate of H. J. Patterson, a bankrupt, is plaintiff and appellee, and Mariam A. Patterson and H. J. Patterson are defendants and appellants, to show cause, if any there be, why that part of the judgment, decree and order made and rendered in said action on October 4, 1916, specified in the petition for appeal and order allowing same, should not be set aside, corrected and reversed and why speedy justice should not be done to the said defendants in that behalf.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the

United States of America, on this 4th day of December, 1916.

CHARLES E. BUNNELL,
District Judge for the Territory of Alaska, Fourth
Judicial Division.

[Seal]

Attest: J. E. CLARK,
Clerk.

Due service of copy of foregoing citation admitted
December 4th, 1916.

McGOWAN & CLARK,
H. E. PRATT,
Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska,
4th Div. Dec. 4, 1916. J. E. Clark, Clerk. By
_____, Deputy. [186]

[Endorsed]: No. 2923. United States Circuit of Appeals for the Ninth Circuit. Mariam A. Patterson, and H. J. Patterson, Appellants, vs. Edward Stroecker, as Trustee of the Estate of H. J. Patterson, a Bankrupt, Appellee. Transcript of the Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Filed January 12, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.